2007

Steven McCowin v. Salt Lake City Corporation, Barry Rasmussen, Mark Hammond : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

STEVEN McCOWIN, Plaintiff/Appellant, v. SALT LAKE CITY CORPORATION; BARRY RASMUSSEN; MARK HAMMOND, Defendants/Appellees.	)	Case No. 20061114-CA

BRIEF OF APPELLEES BARRY RASMUSSEN & MARK HAMMOND

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, HONORABLE GLENN K. IWASAKI

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JURISDICTIONAL STATEMENT

This Court has jurisdiction of this appeal pursuant to Utah Code § 78-2a-3(2)(j).

STATEMENT OF ISSUES

Issue No. 1: Whether the district court correctly dismissed, under Rule 12(b)(6), appellant Steven McCowin's ("McCowin") Complaint for permanent injunctive relief invalidating appellee Salt Lake City's (the "City") authorization to build a garage, which McCowin alleged deprived him of property without due process of law because it blocked a view from his residential property, when, as a matter of law, McCowin has no protectable property right to an unimpeded view across another's property or in the approval or denial of the Application by appellees Barry Rasmussen and Mark Hammond ("Rasmussen/Hammond") to build the garage?

This court reviews the grant of a 12(b)(6) motion to dismiss for correctness. Gunn v. Utah State Ret. Bd., 2007 UT App 4, ¶ 6, 115 P.3d 113. This issue was preserved. [R. 183, 195, 206, 360, 367, 373-74, 479, 482-85, 549, 551.]

Issue No. 2: Whether the district court correctly dismissed the Complaint, even though the district court did not expressly address McCowin's argument that the City's Notice of the public hearing violated the City Code, because the Notice complied with the City Code by stating the substance of Rasmussen/Hammond's Application to build a garage?

This court reviews the grant of a 12(b)(6) motion to dismiss for correctness. Gunn, 2007 UT App 4, at ¶ 6. Further, "no error or defect in any ruling or order or in anything

done or omitted by the court . . . is ground for . . . disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice." Utah R. Civ. P. 61. This issue was preserved. [R. 182, 188, 196-98, 360, 367, 375-76, 486-87, 548, 550.]

Issue No. 3: Whether this Court should also affirm dismissal on the alternative ground that McCowin's Complaint failed to state a claim because, as a matter of law, McCowin was required to exhaust his administrative remedies before bringing an action in the district court, and McCowin admittedly declined to pursue any of the available administrative remedies prior to filing his Complaint in the district court?

This Court "may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record.'" Bailey v. Bayles, 2002 UT 58, ¶ 10, 52 P.3d 1158 (citation omitted). This issue was preserved. [R. 181, 188, 189-90, 548.]

Issue No. 4: Whether this Court should also affirm dismissal on the alternative ground that McCowin's Complaint was barred, as a matter of law, by the applicable statutes of repose because McCowin never appealed to the board of adjustment and waited until July 27, 2006 to file his Complaint in the district court, when the statutes of repose required any challenge to the adequacy of the City's Notice be brought, at the latest, by December 2, 2005, and required any challenge to the City's authorization to build a garage be brought, at the latest, by January 6, 2006?

This Court "may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record.'" Bailey, 2002 UT 58, at ¶ 10 (citation omitted).

This issue was preserved. [R. 181, 182, 188, 189, 377, 548.]

Issue No. 5: Whether this Court should also affirm dismissal on the alternative ground that there are no material issues of fact, and Rasmussen/Hammond are entitled to judgment as a matter of law because McCowin never appealed to the board of adjustment and waited until July 27, 2006 to file his Complaint in the district court, when the applicable statutes of limitations required any challenge to the adequacy of the City's notice to be brought, at the latest, by December 2, 2005 and any challenge to the City's authorization to build the garage to be brought, at the latest, by January 6, 2006?

This Court "may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record.'" Bailey, 2002 UT 58, at ¶ 10 (citation omitted). This issue was preserved. [R. 181, 188, 192, 377-78, 479, 487-91, 549, 550.]

Issue No. 6: Whether this Court should also affirm dismissal on the alternative ground that there are no material issues of fact, and Rasmussen/Hammond are entitled to judgment as a matter of law because McCowin suffered no special damages and has no protectable property right – two elements required, as a matter of law, to obtain a permanent injunction – McCowin's sole requested relief?

This Court "may affirm the judgment appealed from 'if it is sustainable on any legal ground or theory apparent on the record.'" Bailey, 2002 UT 58, at ¶ 10 (citation omitted). This issue was preserved. [R. 189, 202-206, 360, 379-80, 480, 491, 549.]

CITATIONS TO DETERMINATIVE STATUTES AND ORDINANCES

The following statutes and ordinances are determinative of this appeal:

> "If notice given under authority of this part is not challenged under Section 10-9a-801 within 30 days after the meeting or action for which notice is given, the notice is considered adequate and proper."

Utah Code Ann. § 10-9a-209 (West Supp. 2006).

> "No person may challenge in district court a municipality's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies . . . ."

Utah Code Ann. § 10-9a-801(1) (West Supp. 2006).

> "Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final."

Utah Code Ann. § 10-9a-801(2)(a) (West Supp. 2006).

> "The petition is barred unless it is filed within 30 days after the appeal authority's decision is final."

Utah Code Ann. § 10-9a-801(6) (West Supp. 2006).

> "Notice by first class mail shall be provided a minimum of fourteen (14) calendar days in advance of the public hearing . . . to all owners of the land . . . within eighty five feet (85') for certificates of appropriateness for alterations . . . ."

Salt Lake City Code 21A.10.020.E.1.

> "The notice for mailing . . . shall state the substance of the application and the date, time and place of the public hearing, and the place where such application may be inspected by the public."

Salt Lake City Code 21A.10.020.G.

> "For the purposes of this title, certain terms and words are defined and are used in this title in that defined context. Any words in this title not defined in this chapter shall be as defined in Webster's collegiate dictionary."

Salt Lake City Code 21A.62.010.

> "'Building' means a structure with a roof, intended for shelter or enclosure."

Salt Lake City Code 21A.62.040.

> "'Garage' means a building, or portion thereof, used to store or keep a motor vehicle."

Salt Lake City Code 21A.62.040.[1]

STATEMENT OF THE CASE

On September 13, 2005, appellees Rasmussen/Hammond filed an application (the "Application") with the Salt Lake City Historic Landmark Commission (the "Commission") for a permit to construct a "new garage." [R. 170, 213, 247.] Pursuant to the City's Code, the Commission issued a written notice for a public hearing to be held on November 2, 2005, relative to the Application (the "Notice"). [R. 6, 171, 214, 256.] The public hearing (the "Hearing") was held on that date, and the Commission approved the Application (the "Approval"). [R. 172, 215.] On December 7, 2005, the Commission issued formal findings and a written order approving the Application (the "Order"). [R. 21-22, 172-73, 215-16.] Shortly thereafter, Rasmussen/Hammond began construction of their garage. [R. 173, 216.]

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[1]A copy of all ordinances cited in this Brief are included in the Addendum as Exhibit 1.

More than seven months after the Approval, on July 27, 2006, appellant McCowin, a neighbor of Rasmussen/Hammond who received the Notice but elected not to attend the Hearing, filed a Complaint in the Third District Court against the City and Rasmussen/Hammond. [R. 1-5.] The Complaint alleged, *inter alia*, that Rasmussen/Hammond's garage constituted a "significant visual barrier to" McCowin's residence and was "incompatible with the historic character" of his neighborhood. [R. 2.] The Complaint also alleged that the Notice failed to "state the substance" of the Application and, for that reason, McCowin did not have actual notice of the substance of the Application until July 15, 2006. [R. 2, 4.] The Complaint requested the district court to (1) determine that the Notice, Approval and Order were invalid, and (2) issue preliminary and permanent injunctive relief halting further construction of the garage and requiring the Commission to hold a new public hearing on the Application. [R. 4-5.]

On August 21, 2006, the City filed a Motion to Dismiss, arguing the Complaint failed to state a claim upon which relief could be granted because, as a matter of law, the Complaint was untimely, McCowin failed to exhaust his administrative remedies, and the Notice fully complied with the City Code. [R. 61-66.]

On September 29, 2006, Rasmussen/Hammond filed a Motion to Dismiss or, Alternatively, for Summary Judgment.[2] [R. 359-382.] In that Motion, Rasmussen/Hammond joined in the City's Motion to Dismiss and argued the Complaint

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[2]Rasmussen/Hammond filed an Answer to the Complaint on August 8, 2006. [R. 15-18.]

failed to state a claim upon which relief could be granted because, as a matter of law, McCowin had no protectable property right for purposes of due process and had received adequate notice and an opportunity to be heard. [R. 360, 367, 373-74, 375-76, 377.] Alternatively, Rasmussen/Hammond argued that summary judgment was appropriate because, *inter alia*, the undisputed facts demonstrated McCowin's claim is time-barred, and because McCowin lacked standing to seek a permanent injunction. [R. 377-80.]

The district court held a hearing on the two Motions on October 23, 2006, during which all parties appeared and presented oral argument. [R. 546-47.] At the end of the hearing, the district court took the motions under advisement. [R. 546.] Subsequently, on October 30, 2006, the district court issued a Memorandum Decision, dismissing the Complaint for failure to state a claim upon which relief could be granted. [R. 547-52.] The Court reasoned that, as a matter of law, McCowin had no "protectable property right for purposes of constitutional due process," and the "deprivation of a procedural right to be heard . . . is not actionable when there is no protected right."[3] [R. 551-52.] On November 14, 2006, the district court entered a Judgment dismissing the Complaint with prejudice.[4] [R. 584-85.]

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[3]A copy of the Memorandum Decision is Exhibit 2 in the Addendum.

[4]A copy of the Judgment is Exhibit 3 in the Addendum.

STATEMENT OF FACTS

I. The Parties

Appellant McCowin is an individual who resides at 435 S. 1200 E. in Salt Lake City, Utah. McCowin's backyard faces east toward the University of Utah, with a view across a paved alley and through the backyards of several other homes. McCowin's backyard is shrouded by several large trees on its southern and eastern boundaries, which partially block the view from his backyard looking southward and eastward. McCowin's property does not share any boundaries with Rasmussen/Hammond's property, which is located across the alley and to the south-east of McCowin's backyard. [R. 170, 212-13, 221-38.]

Rasmussen/Hammond are individuals who reside at 446 S. Douglas St. (1250 E.), Salt Lake City, Utah. Rasmussen/Hammond's backyard faces west, across the paved alley. Between December 2005 and October 2006, Rasmussen/Hammond constructed a garage in their backyard with City approval. Their garage faces west, with the garage door opening onto the alley. The garage contains a loft area, which is used solely for additional storage. [R. 169, 212.]

II. Notice and Hearing on Rasmussen/Hammond's Application

On September 13, 2005, Rasmussen/Hammond submitted an Application to the Commission for a permit to construct a "new garage to be built on alley." [R. 247.] As required, Rasmussen/Hammond also submitted a site plan and preliminary construction drawings for their proposed garage. As per the drawings, the proposed garage was to be a

720 square-foot, two-car, detached garage accessible from the back alley. The garage was to have a gabled, asphalt shingled roof rising 17 feet high to the midpoint of the gable, and 23 feet high to the peak of the roof, with a 6 ½ foot loft for storage space. [R. 267-80] It is undisputed that the site plan and preliminary construction drawings were placed on file in the public record. [R. 369, 396, 480.]

The Commission issued the Notice relative to the Application shortly after receiving it. It is undisputed that the Notice stated a public hearing was to be held on November 2, 2005 at 4:00 p.m. in Room 126 of the City and County Building and described the Application as follows:

> Case No. 027-05 at 446 South Douglas Street by Barry Rasmussen and Mark Hammond, requesting to construct a new garage with access to the abutting alley. This property is located in the University Historic District.

[R. 6, 256-57, 369, 396, 480-81.] The Notice also gave the contact information for Jackie Gasparik, the Commission staff member responsible for reviewing and making a recommendation relative to the Application. [R. 6, 256-57.]

The Commission sent the Notice to all landowners within 85 feet of Rasmussen/Hammond's property. It is undisputed that McCowin, whose property is within 85 feet, received the Notice shortly after September 15, 2005, read the Notice, and elected not to attend the public hearing. [R. 130, 369, 396-97, 481.]

Prior to the public hearing, the Commission's Planning Staff prepared a report containing findings of fact and a recommendation on the Application (the "Report"). The Report analyzed the garage, its compatibility with the character of the University Historic

District (the "District"), and its compliance with District design guidelines. The Report concluded that Rasmussmen/Hammond's garage complied with all applicable standards and would be compatible with the character of the District. The Report, therefore, recommended that the Commission approve the Application. [R. 241-46.]

It is undisputed that the Commission held the Hearing on the Application on November 2, 2005. Rasmussen/Hammond were the only members of the general public to attend. Neither McCowin nor any other landowners within the District appeared at the Hearing to comment on or object to the proposed garage. [R. 370, 397.]

At the Hearing, the Commission was presented with the Planning Staff's Report. Rasmussen/Hammond also presented the Commission with final construction drawings, which, in all material respects, were the same as the preliminary construction drawings. It is undisputed that the final construction drawings also became a matter of public record. [R. 370, 398, 481.]

The Commission questioned Rasmussen/Hammond about certain particulars of their garage, including its height compared to the height of their home. Rasmussen/Hammond stated their house was approximately 30 feet tall and their garage was only 1 ½ stories tall. They also stated the garage would have a loft area that would be used solely for storage. Notably, one Commission member commented that the proposed garage was "a well designed structure providing off street parking accessed from the alley and . . . has a benefit because of the topography of lowering the garage height relative to the house." [R. 293.] At the conclusion of the hearing, a motion was made to approve the

Application, which passed unanimously. [R. 293.]

Three days later, on November 5, 2005, the Commission issued a Certificate of Appropriateness, and the City issued a Building Permit, for the garage. It is undisputed that, approximately one month later, on December 7, 2005, the Commission issued the Order formally approving the garage. The Order was essentially the written meeting minutes from the Hearing. [R. 292-93.]

III. Rasmussen/Hammond's Construction of Their Garage, and McCowin's Failure to Object or File an Administrative Appeal

Shortly after the Commission issued its Order, Rasmussen/Hammond began construction of their new garage. Over the next seven-and-a-half months, Rasmussen/Hammond invested over $50,000 in their garage. By July 2006, they had, *inter alia*, laid the foundation, poured the concrete slab and approach, framed the garage, installed the roofing sublayers for laying shingles, and installed the garage door. All construction conformed with the final construction drawings and site plan that were approved by the Commission and were a matter of public record. [R. 173, 216.]

During that seven and a half month period, neither McCowin nor anyone else raised any objection relative to Rasmussen/Hammond's construction. In fact, McCowin noticed Rasmussen/Hammond's construction beginning in the winter and spring of 2006, but never even crossed the alley to talk to them about their garage. [R. 173, 216, 271-72.]

On approximately July 15, 2006, McCowin claims to have finally realized that Rasmussen/Hammond's garage was to be 23 feet high. It is undisputed that McCowin did

not file his Complaint in this case until July 27, 2006. [R. 1, 372, 399, 481.]

It is undisputed that at no time did McCowin file an administrative appeal of the Commission's Approval or Order. [R. 372, 399.]

SUMMARY OF ARGUMENT

This Court should affirm the district court's dismissal of McCowin's Complaint, with prejudice, for failure to state a claim upon which relief could be granted. The district court correctly dismissed McCowin's claim for injunctive relief because McCowin has no protectable property right in the approval or denial of the Application or in the view across Rasmussen/Hammond's property, [R. 360, 367, 373-74, 375-76, 377] which is an absolute prerequisite to establish the violation of due process McCowin alleged. [R. 547-52.]

Further, the district court correctly dismissed McCowin's Complaint, even though the district court did not expressly address McCowin's argument that the Notice violated the City Code, because, as a matter of law, the Notice complied with the City Code by stating the substance of Rasmussen/Hammond's Application to build a new garage. [R. 256-57, 369, 396, 480-81.] As such, even if the district court erred in not expressly addressing McCowin's argument below that he had a statutorily-created right to notice, any such error was harmless because he received the required notice.

Additionally, this Court can and should affirm the Judgment on any and all of the following grounds, each of which were raised below. First, McCowin's claim is barred, as a matter of law, because McCowin knowingly and admittedly failed to exhaust his administrative remedies. [R. 372, 399.] Second, McCowin's claim has been irrevocably

extinguished by the relevant statutes of repose, Utah Code Ann. § 10-9a-209 & 801, because McCowin failed to raise any objections until well after the express statutory periods had lapsed. [R. 1, 372, 399, 481.] Third, even if the Court finds these two statutes to be statutes of limitations, they still operate to bar McCowin's claim because, based on the undisputed facts and as a matter of law, the limiting periods expired months before McCowin filed his complaint. [R. 1.] Finally, based on the undisputed record, Rasmussen/Hammond are entitled to judgment as a matter of law because McCowin failed to show any special damages or property right, both necessary elements for the issuance of an injunction – his sole requested relief. [R. 4-5.] For these additional grounds, the result reached by the district court was correct and this Court should affirm.

ARGUMENT

I. THIS COURT SHOULD AFFIRM DISMISSAL OF McCOWIN'S CLAIM BECAUSE McCOWIN HAS NO PROTECTABLE PROPERTY INTEREST AT STAKE WHICH TRIGGERED ANY DUE PROCESS RIGHTS.

The district court correctly ruled that the Complaint, on its face and as a matter of law, failed to state a claim for injunctive relief based on a violation of due process. McCowin did not, and could not, allege that he had any property right that was affected by the City's Approval and Order.

To establish a due process violation, a party must sufficiently allege injury to a viable liberty or property interest. See Patterson v. American Fork City, 2005 UT 7, ¶¶ 23-24, 67 P.3d 466; Hansen v. Eyre, 2005 UT 29, ¶ 10, 116 P.3d 290. Here, McCowin has no protectable property interest that was affected by the Approval and Order, and, therefore,

McCowin could not establish a violation of his due process rights.

McCowin attempted to establish the required property right in two ways. First, he argued that the garage "constitutes an [sic] significant visual barrier to the residences of Mr. McCowin," which impinged on what he assumed was a right to an unimpeded view across Rasmussen/Hammond's property. [R. 2, 131-32.] Second, McCowin claimed he had a property right based on the City Code "that safeguarded the architectural integrity of the . . . District."[5] [R. 412-13] Both arguments are unavailing.

Courts have uniformly held that a person has no protectable common-law property right to an unobstructed view across a neighbor's property. Bubis v. Kassin, 733 A.2d 1232, 1240 (N.J. Super. Ct. App. Div. 1999); Messett v. Cohen, 741 So. 2d 619, 622-23 (Fla. Dist. Ct. App. 1999); Cash v. Cincinnati Bd. of Zoning Appeals, 690 N.E.2d 593, 596-97 (Ohio Ct. App. 1996). Likewise, the law is clear that McCowin has no protectable state-created right based on the City Code because, under the relevant ordinances, he had no legitimate claim to any entitlement. Patterson v. American Fork City, 2003 UT 7, ¶¶ 23-24, 67 P.3d 466; Gagliardi v. Vill. of Pawling, 18 F.3d 188, 192 (2d Cir. 1994); Overgaard v. Rock County Bd. of Comm'rs, No. Civ. A. 02-601, 2003 WL 21744235, *6 (D. Minn. July 25, 2003). Indeed, there is not a single ordinance that could be construed as granting McCowin a legitimate property right sufficient to support the alleged violation of due process. [R. 410-13, 484-85.]

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[5]McCowin has never alleged or argued that the Approval and Order injured any liberty or other claimed property interest, which it did not.

On appeal, McCowin does not dispute that he has no protectable property right for purposes of constitutional due process.[6] [Appellant's Br. at 6-7 & n.6.] Accordingly, the district court correctly dismissed McCowin's claim for injunctive relief with prejudice.

II. McCOWIN FAILED TO STATE A CLAIM BASED ON THE ALLEGED VIOLATION OF THE CITY CODE BECAUSE THE NOTICE COMPLIED WITH THE APPLICABLE SECTIONS OF THE CODE.

The Complaint, on its face and as a matter of law, failed to state a claim for injunctive relief based on a violation of City Code because the Notice stated the substance of the Application in compliance with the sections of the City Code governing notice.[7]

In pertinent part, the City Code required the Commission to provide notice, fourteen days in advance of the public hearing, to all landowners within eighty-five feet of the property for which the application for a certificate of appropriateness had been submitted. Salt Lake City Code 21A.10.020.E.1. The City Code further required that:

> The notice for mailing . . . shall state the substance of the application and the date, time and place of the public hearing, and the place where such application may be inspected by the public.

Salt Lake City Code 21A.10.020.G.

There is no dispute that McCowin received the Notice sufficiently in advance of

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[6]Although, on appeal, McCowin purports to drop his due process argument, [Appellant's Br. at 1-4], he does make several veiled references to that argument. [Id. at 5, 7.] Thus, to the extent McCowin attempts to raise this issue in his reply brief or at oral argument, this Court should reject his due process arguments.

[7]Assuming *arguendo* that the district court erred in not addressing McCowin's arguments that he had a statutorily created right to notice, this error is harmless because the Notice did not violate that right. See Utah R. Civ. P. 61.

the public hearing. [R. 369, 396-97, 481.] There is also no dispute that the Notice stated the date, time and place of the public hearing, and the contact information for the staff member responsible for the Application. [R. 256.] Thus, the only question is whether or not the Notice stated the "substance" of the Application. Under the City Code, and as a matter of law, the answer to that question is an unqualified yes.

The word "substance" is not defined in the City Code. See Salt Lake City Code 21A.62.040. Words which are not defined in the Code "shall be as defined in Webster's collegiate dictionary." Salt Lake City Code 21A.62.010. Webster's dictionary defines "substance" as the "essential nature . . . ; a fundamental or characteristic part or quality." Merriam-Webster's Collegiate Dictionary 1245 (11th ed. 2006).

Under this definition, the Notice stated the essential nature, or fundamental or characteristic part or quality of the Application – the Application was for a "new garage."[8] [R, 256.] A garage is defined in the City Code as "a building, or portion thereof, used to store or keep a motor vehicle." Salt Lake City Code 21A.62.040. Rasmussen/Hammond's garage is just that – a building[9] that stores their two cars. The inclusion of a loft for general storage does not change the fundamental fact that the building is a garage.[10]

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[8]Even assuming, for the sake of argument, that the Notice did not state the "substance" of the Application, the Notice is now deemed "adequate and proper" by operation of Utah Code Ann. § 10-9a-209. See infra, Argument, Parts IIIB & C.

[9]Building is defined as "a structure with a roof, intended for shelter or enclosure." Salt Lake City Code 21A.62.040.

[10]A notice that states the intended use of a structure provides notice of the substance of the building, even though it does not set out the size of the building. See

In the district court, McCowin argued that, under the City Code's definition of "garage," only the bottom half of the garage is a garage and the overhead storage loft constitutes an entirely different structure. [R. 414-15.] McCowin's reading is manifestly unreasonable, and contrary to the actual language in the City Code used to define a garage.

Under McCowin's reasoning, only the three-dimensional space occupied by a parked car is the garage, and every other space in the same building or room is not part of the garage – including, incredibly, the airspace that must exist above a car and below even an eight-foot ceiling.[11] Not only is that definition absurd, but the City Code's express definition of a garage negates that reading. The plain language of the City Code's definition of garage does not require every square inch of a building to be used to store or keep a motor vehicle to be classified as a garage. Rather, by definition, a garage includes a building that has a portion used to store and keep a motor vehicle. Salt Lake City Code 21A.62.040. It is undisputed that not just a portion, but the essential portion of Rasmussen/Hammond's garage is used to keep or store Rasmussen/Hammond's cars.

Contrary to McCowin's argument, the City Code did not require the Notice to state

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Carson v. Bd. of Appeals of Lexington, 75 N.E.2d 116, 118 (rejecting challenge that notice was inadequate because it did not disclose the size of the 18-bus garage for which the application was sought); Moore v. Cataldo, 249 N.E.2d 578, 580 (Mass. 1969) (rejecting challenge that notice was inadequate because it failed to indicate the size of the building or the number of patients a convalescence center would accommodate).

[11]Indeed, under McCowin's reasoning, the portion of a building constituting the "garage" could conceivably change day-to-day and hour-to-hour as cars are parked in or removed from the building.

anything more than Rasmussen/Hammond sought to build a "garage."[12] As such, this Court should affirm the district court's dismissal of the Complaint with prejudice.

III. THIS COURT SHOULD ALSO AFFIRM THE DISMISSAL OF McCOWIN'S CLAIM ON EACH OR ANY ONE OF THE ALTERNATIVE GROUNDS APPARENT ON THE RECORD.

The Court should also affirm the district court's Judgment because McCowin failed to exhaust his administrative remedies, his claim is barred by the applicable statutes of repose and/or limitations, and he is not entitled to obtain a permanent injunction.

Each of these reasons was fully briefed in the record below and, although the district court did not reach them in dismissing the complaint, each provides a separate and independent basis to affirm.

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[12]This comports with the due process requirement of "adequate notice."

> Due process is not a rigid concept. . . . Instead, due process is flexible and, being based on the concept of fairness, should afford the procedural protections that the given situation demands. The extent of notice required in this case is merely "adequate notice," which provides an important, but relatively low, threshold to satisfy. Adequate notice is defined as "[n]otice reasonably calculated to apprise a person of an action, proceeding, or motion. Notice sufficient to permit an objection or defense."

Low v. City of Monticello, 2004 UT 90, ¶ 15, 103 P.3d 130 (citations and quotation marks omitted). "[D]ue process does not require municipalities to inundate residents with information about every possible detail of a given action or to foretell potential consequences of that action." Id. at ¶ 19.

Here, the Notice gave more than enough information for an interested party to decide whether they would like to appear at the hearing. Just because the garage turned out to be taller than McCowin anticipated does not mean he received inadequate notice. See Low, 103 P.3d at 134-35 (rejecting plaintiff's argument "that City residents were not provided with enough information about the details" of the city's retention of an option to repurchase the city's power distribution system).

It is well settled Utah law that

> an appellate court may affirm the judgment appealed from "if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even through such ground or theory is not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court."

Bailey v. Bayles, 2002 UT 58, ¶ 10, 52 P.3d 1158 (quoting Dipoma v. McPhie, 2001 UT 61, ¶ 18, 29 P.3d 1225). This rule applies when an appellate court reviews a trial court's dismissal pursuant to a motion to dismiss, see Miller v. Weaver, 2003 UT 12, ¶ 8, 66 P.3d 592, and appellate courts routinely affirm trial court decisions on procedural rules or theories different than those on which the trial court relied. See County v. Jensen, 2003 UT App 444, ¶ 7, 83 P.3d 405 (affirming trial court's grant of summary judgment on alternative ground of standing).[13]

The policy behind this rule is that the ultimate question on appeal is whether the trial court's ruling is correct, not whether the grounds or basis for that ruling are correct. G. Fred Metos, Appellate Advocacy, 23-JUL-Champion 52, 52 (1999). For that reason, an appellate court will endeavor "to affirm a trial court's decision whenever [the appellate court] can do so on proper grounds even though the trial court may have assigned an incorrect reason for its ruling." Jesperson v. Jesperson, 610 P.2d 326, 328 (Utah 1980). In this way, the rule promotes judicial economy. Okelberry v. West Daniels Land Ass'n,

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[13]See also Trimble v. Asarco, Inc., 232 F.3d 946, 955-56 (8th Cir. 2000) (affirming 12(b)(6) dismissal through summary judgment); Bradford v. Gonsouland, No. 99-17071, 2000 WL 959614, at *1 (9th Cir. July 10, 2000) (same).

2005 UT App 327, ¶ 11, 120 P.3d 34.

An alternate ground on which this Court may affirm a trial court's judgment is apparent on the record if: (1) the record contains "sufficient and uncontroverted evidence supporting the ground or theory to place a person of ordinary intelligence on notice that the prevailing party may rely thereon on appeal," State v. Montoya, 937 P.2d 145, 149-50 (Utah Ct. App. 1997); and/or (2) the legal theory was raised below. See I.M.L. v. State, 2002 UT 110, ¶ 24 n.10, 61 P.3d 1038. Here, each of the following grounds are apparent on the record and serve as a proper basis on which this Court should affirm the Judgment.

A. The Complaint is Barred in its Entirety Because McCowin Failed to Exhaust His Administrative Remedies.

Utah law required McCowin to exhaust his administrative remedies prior to filing his Complaint in the district court. Because he failed to do so, his Complaint is barred as a matter of law.

A plaintiff must exhaust applicable administrative remedies as a prerequisite to seeking judicial review of an administrative decision or action, absent extraordinary circumstances, which are not present here. Johnson v. Utah State Ret. Office, 621 P.2d 1234, 1237 (Utah 1980). This requirement must be strictly enforced, Patterson v. American Fork City, 2003 UT 7, ¶ 17, 67 P.3d 466, and squarely applies to land use decisions, such as the one at issue here. Id. at ¶ 16 (holding that complaint must be dismissed if plaintiff failed to exhaust administrative remedies with regard to a land use decision).

Under Utah's Municipal Land Use, Development and Management Act ("MLUDMA"), "[n]o person may challenge in district court a municipality's land use decision . . . until that person has exhausted the person's administrative remedies." Utah Code Ann. § 10-9a-801(1).[14] The legislative intent of this provision is "to recognize the authority granted to municipal decision-making bodies." Foutz v. City of South Jordan, 2004 UT 75, ¶ 15, 100 P.3d 1171.

The City Code, as authorized by MLUDMA, sets out the administrative procedures governing the City's land use decisions, and requires an aggrieved party to exhaust all administrative remedies prior to filing in the district court.[15] Here, McCowin admittedly failed to pursue any administrative remedies prior to filing suit, [R. 4, 372, 399-400], despite the fact he was required to do so by MLUDMA and the City Code. Rather,

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[14]MLUDMA also provides: "As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance." Utah Code Ann. § 10-9a-701.

[15]Specifically, the City Code establishes an historic landmark commission that has authority to review and approve or deny applications for certificates of appropriateness for properties in Historic Districts. Salt Lake City Code 21A.06.050. The City Code also establishes a board of adjustment to hear appeals from administrative decisions regarding zoning. Salt Lake City Code 21A.06.040 & 21A.16.010.

The City Code sets out the procedure governing the appeal of an administrative land use decision. A party appealing such a decision must file a notice of appeal within thirty days of the administrative decision and pay the appropriate fees. Salt Lake City Code 21A.16.030. Normally, the filing of the appeal results in an automatic stay of all further proceedings followed by notice and a public hearing, after which the board of adjustment may modify, reverse or affirm, wholly or in part. Id. After a party has exhausted these administrative appellate remedies, they "may, within thirty (30) days after the decision is made, present to the district court a petition specifying the grounds on which the person was adversely affected." Salt Lake City Code 21A.16.040.

McCowin never gave the board of adjustment a chance to review the Commission's decision, and instead "leap-frogged over the entire administrative process and sought immediate relief" in the district court. Patterson, 2003 UT 7, ¶ 17. Thus, as a matter of law, the exhaustion of remedies rule bars the Complaint.

McCowin's assertion below that the district court should have waived the exhaustion requirement because of "unusual circumstances" is wholly without merit. Under Utah law, a court may waive the exhaustion requirement under only two "unusual circumstances": (1) "where it appears that exhaustion would serve no useful purpose," or (2) if "there is a likelihood that some oppression or injustice is occurring such that it would be unconscionable not to review the alleged grievance." State Tax Comm'n v. Iverson, 782 P.2d 519, 524 (Utah 1989). Neither exception applies here.

McCowin argued below that it would have been futile for him to file an administrative appeal because, when he approached the City in July 2006, he was allegedly told by a City official that his appeal would be rejected out of hand. [R. 86, 131.] This purported justification is contrary to the record because McCowin admits that he filed his Complaint in the district court before the City official allegedly told McCowin his appeal would be rejected. [R. 598, p. 27-28.] At the October 23, 2006 district court hearing, McCowin represented that he filed his Complaint **before** ever meeting with the city official, who, days later, allegedly told McCowin the Commission would reject his

appeal.[16] Id. Consequently, McCowin's futility justification is based on alleged facts that occurred after he filed his Complaint, which do not provide any justification for not exhausting his administrative remedies **before** filing the Complaint.

Further, even if the Court were to disregard McCowin's representation, his claimed exceptions still do not apply. Assuming, *arguendo*, McCowin believed or was told that an administrative appeal would have been futile does not mean that exhaustion would serve no useful purpose. See McFadden v. Cache County Corp., 2006 UT App 256, ¶ 1.[17] Regardless of his belief, McCowin was obligated by law to file his administrative appeal and give the board of adjustment an opportunity to render a decision. Instead, McCowin deprived the board of adjustment "of the opportunity to hear, analyze, and critically review a matter within the purview of its particular responsibility and expertise," Johnson, 621 P.2d at 1237, such as its interpretation of the meaning of the term "substance," as that term is used in the City Code.

Moreover, allowing a plaintiff, such as McCowin, to avoid the exhaustion requirement of Section 801(1) based on a failure to even attempt to pursue an

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[16]Specifically, McCowin noted that he "had a long meeting with Mr. Brent Wilde . . . **I gave him the complaint** . . . **I had filed the complaint in this court earlier that day**. . . . He said he wanted to take a couple of days to find out what the board would do." [R. 598, p. 27-28 (emphasis added).] Furthermore, McCowin's affidavit, dated August 29, 2006, rather carefully states that he began to prepare an administrative appeal "[a]t about the same time that [he] filed the Complaint in this matter." [R. 131.]

[17]Cf. Patterson, 2003 UT 7, at ¶ 20 ("[A]llegations of unfairness in the day-to-day relationship between [the plaintiffs] and City staff do not support a claim that the entire administrative appeals process is inoperative or unavailable.").

administrative appeal within the required time period would eviscerate Section 801(1)'s requirements and explicit purpose. Cf. Foutz, 2004 UT 75, ¶ 26 (refusing to allow plaintiffs to circumvent exhaustion requirement of Section 801(1)'s predecessor because to do so "would eviscerate the requirements and evident purpose of that statute.").

As to the "oppression or injustice" exception, the only time a Utah appellate court has considered applying it was in the context of a prisoner who filed a petition for habeas corpus based on cruel and unusual punishment without first exhausting his administrative remedies. Ziegler v. Miliken, 583 P.2d 1175, 1176 (Utah 1978). Even under those circumstances, the court refused to apply the exception and affirmed the denial of the habeas corpus petition based on the prisoner's failure to exhaust his administrative remedies. Id. Hence, there is simply no support under Utah law to equate an allegedly misleading notice of hearing with "oppression or injustice."

The bottom line is that McCowin went straight to the district court instead of first exhausting his administrative remedies. Because there is no proper ground on which to excuse McCowin from the exhaustion requirement, the Court should affirm the district court's dismissal of the Complaint with prejudice.

B. The Complaint is Barred in its Entirety by the Applicable Statutes of Repose.

Any right to challenge the sufficiency of the Notice was irrevocably extinguished by operation of Utah Code Ann. § 10-9a-209[18] on December 2, 2005 – thirty days after the

[18]Section 209 of MLUDMA provides: "If notice given under authority of this part is not challenged under Section 10-9a-801 within 30 days after the meeting or action for

Hearing – and any right to challenge the Commission's Approval and Order was irrevocably extinguished by operation of Utah Code Ann. § 10-9a-801(2) & (6),[19] at the latest, on January 6, 2006.[20] Accordingly, the Complaint, which was not filed until almost nine months after the Hearing, and almost seven months after the decision became unappealable, is barred as a matter of law.

McCowin's arguments below regarding tolling have no bearing on the time periods prescribed by Sections 209 and 801 because Sections 209 and 801 are statutes of repose,[21] not statutes of limitation.[22] On its face, Section 209 begins to run from the occurrence of a

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which notice is given, the notice is considered adequate and proper." Utah Code Ann. § 10-9a-209.

[19]Sections 801(2) & (6) of MLUDMA state that

> Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final. . . . (6) The petition is barred unless it is filed within 30 days after the appeal authority's decision is final.

Utah Code Ann. § 10-9a-801(2)(a) & (6).

[20]The January 6th date gives McCowin the benefit of all doubt because it assumes that the Commission's decision did not have effect until the Order was issued and assumes the decision did not become final at the time it was made, but rather, after expiration of the period in which McCowin could administratively appeal the decision.

[21]While no one specifically referred to Section 801 as a statute of repose below, appellees clearly and repeatedly argued in their briefs below that Section 801 bars McCowin's claim. As such, the issue is apparent on the record, and this Court may affirm on the grounds that Section 801 is a statute of repose. [R. 61-66, 192-94, 377-78.]

[22] One of the major characteristics of statutes of repose is that they cannot be tolled by the discovery rule, equity, or any other grounds: they set "a designated event for the

specific event unrelated to any injury – the date the public hearing is held. The window always expires exactly thirty days after the public hearing. Similarly, on its face, Section 801 begins to run from the occurrence of a specific event unrelated to any injury – the date on which the administrative decision becomes final. The window always expires exactly thirty days after a final administrative judgment is rendered. See Raithaus v. Saab-Scandia of America, Inc., 784 P.2d 1158, 1161 (Utah 1989) (stating that statutes of repose run from occurrence of specific event rather than accrual of any claim).

Sections 209 and 801 irrevocably extinguish a cause of action for a zoning ordinance violation by the City in order to protect the City and those who rely upon the City's zoning decisions from protracted potential liability by forcing those who might object to inquire and object in a timely fashion or forever lose the right to object.[23] McCowin failed to timely object and, therefore, forever lost his right to do so. Accordingly, the Court should affirm dismissal of McCowin's Complaint as barred under the applicable statutes of repose.

C. McCowin's Claim that the Notice Violated the City Ordinance is Barred by the Applicable Statutes of Limitations.

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statutory period to start running and then provide that at the expiration of the period any cause of action is barred regardless of usual reasons for 'tolling' the statute." In re Marriage of Kunz, 2006 UT App 151, ¶ 16, 136 P.3d 1278 (quoting Perry v. Pioneer Wholesale Supply Co., 681 P.2d 214, 219 (Utah 1984)).

[23]Statutes of repose are particularly appropriate and desirable in the zoning context because they promote predictability and stability in land use. Foutz v. City of South Jordan, 2004 UT 75, ¶ 15, 100 P.3d 1171 (holding purpose of thirty-day limitation period in Utah Code Ann. § 10-9a-801(2), (6) is "to encourage the quick resolution of disputes over land use decisions.").

This Court should also affirm dismissal because there are no material issues of fact, and Rasmussen/Hammond were entitled to relief as a matter of law because, even if this Court should find that Sections 209 and/or 801 are statutes of limitations, they both still operate to bar McCowin's claim. Under MLUDMA, any person adversely affected by an appeal authority's final land use decision has thirty days within which to file a petition for review in district court or such petition is barred. Utah Code Ann. § 10-9a-801(2), (6). The purpose of this limitation period is "to encourage the quick resolution of disputes over land use decisions." Foutz v. City of South Jordan, 2004 UT 75, ¶ 26, 100 P.3d 1171. A court must dismiss a complaint if the plaintiff failed to file the petition within the thirty day period. Id. at 1177. Further, unless objected to, a notice sent pursuant to MLUDMA is deemed adequate and proper thirty (30) days after the hearing for which the notice was sent. Utah Code Ann. 10-9a-209.

Here, it is undisputed that: (1) the thirty day periods in Utah Code Ann. §§ 10-9a-209 & -801 set out the applicable limitations periods; (2) a public hearing regarding Rasmussen/Hammond's Application was held on November 2, 2005; (3) the Commission's decision became final, at the very latest, on January 6, 2005; and (4) McCowin did not file his claim in this Court until July 27, 2006, approximately six months too late.[24] [R. 86, 88 n.6, 121-22, 130-31, 172-73, 215-16.] As such, McCowin's claim is

[24]Indeed, by that time, defendants had already invested over $50,000 in constructing their new garage, [R. 173, 216, 371], the very result the statutory limitation periods seek to avoid if there is a potential that the land use decision will be overturned. Foutz, 2004 UT 75, at ¶ 26.

barred as a matter of law. Foutz, 2005 UT 14, ¶ 37, 100 P.3d at 1177.

McCowin's argument below that Sections 209 and 801 should be tolled based on the concealment version of the discovery rule because the Notice was allegedly "misleading" is entirely unavailing.

A court may toll a statute of limitations under the "concealment version" of the equitable discovery rule only if the plaintiff establishes two elements: (1) the defendant concealed the plaintiff's cause of action; and (2) the plaintiff either did not know or reasonably should not have discovered the facts underlying the cause of action before the limitations period expired. Russell Packard Dev., Inc. v. Carson, 2005 UT 14, ¶¶ 28-30, 108 P.3d 741.

Utah law is uniform that the first element – concealment or misleading conduct – requires affirmative actions on the part of the defendant. Id. at 747-48; Berenda v. Langford, 914 P.2d 45, 52 (Utah 1996); In re Hoopiiaina Trust, 2006 UT 53, ¶ 36-39, 144 P.3d 1129. That is to say, the plaintiff must demonstrate the defendant took affirmative steps to **intentionally** conceal or mislead the plaintiff as to the existence of the plaintiff's cause of action. Cf. Cambridge Literary Properties, Ltd. v. Goebel, 448 F. Supp. 2d 244, 266 (D. Mass. 2006) (holding plaintiff failed to demonstrate defendant's misleading notice was **intended** to conceal plaintiff's cause of action).

McCowin cannot assert, in good faith, that calling the "garage" a "garage" was an affirmative step to intentionally conceal his cause of action. Indeed, there is no evidence that anyone took affirmative steps to conceal his cause of action. At most, the record

indicates McCowin mistakenly believed that Rasmussen/Hammond would build a garage that adhered to McCowin's subjective notion of what constitutes a garage. As a matter of law, McCowin's mistaken belief does not lead to the conclusion that someone intentionally concealed his cause of action. See Vigil v. City and County of Denver, 162 Fed. Appx. 809, 812 (10th Cir. 2006) ("[A] plaintiff must show that his ignorance of his cause of action was not the result of his lack of diligence, but was due to affirmative acts or active deception by the Defendant to conceal the facts giving rise to the claim.").

Moreover, even if there were a disputed issue of fact regarding whether the Commission or Rasmussen/Hammond took affirmative steps to conceal McCowin's cause of action, which there is not, McCowin reasonably should have discovered the facts underlying his cause of action when he received the Notice, and Rasmussen/Hammond made their construction drawings and site plan a matter of public record.

"Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led." Russell Packard, 2005 UT 14, at ¶ 37 (citation omitted). Stated another way:

> Where the circumstances are such as to suggest to a person of ordinary intelligence the probability that he has been defrauded, the duty of inquiry arises, and if he omits that inquiry when it would have developed the truth, and shuts his eyes to the facts which call for investigation, knowledge of the fraud will be imputed to him.

Anderson v. Dean Witter Reynolds, Inc., 920 P.2d 575, 579 (Utah Ct. App. 1996).

It is undisputed that: (1) Rasmussen/Hammond's site plan, preliminary construction drawings, and final construction drawings were a matter of public record as

of November 2, 2005 [R. 369, 396, 480]; (2) the Notice stated that a public hearing was to be held on November 2, 2005 at 4:00 p.m. in Room 126 of the City and County Building, that Rasmussen/Hammond requested to "construct a new garage with access to the abutting alley," and staff member Jackie Gasparik could be contacted at 535-6354 or Jackie.gasparik@slcgov.com regarding the Application [R. 256-57, 369, 396, 480-81]; (3) McCowin received the Notice, read the Notice, and elected to not attend the Hearing [R. 130, 369, 396-97, 481]; (4) the Commission issued its Order approving the garage no later than December 7, 2005 [R. 292-93]; and (5) McCowin did not file his Complaint in this case until July 27, 2006. [R. 1.]

Based on this undisputed record, McCowin should have inquired about and discovered the actual size, dimensions and layout of the garage by November 2, 2005. McCowin chose to omit that inquiry and shut his eyes to the fact the Notice stated that Rasmussen/Hammond wanted to build a new garage that would abut the alley behind his house.[25] Hence, knowledge of the size, dimensions and layout of the garage is imputed to McCowin as a matter of law, and the statute of limitations period was tolled, if at all, only until November 2, 2005. Since that date arose prior to the Order, McCowin had thirty days from December 7, 2005 within which to file his claim. McCowin failed to do so, and, therefore, his Complaint is time-barred as a matter of law. Accordingly, the Court

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[25]McCowin's argument that he acted reasonably in relying on his interpretation of the Notice because of the Commission's "position of trust" does not change this result. Regardless of whether he acted reasonably or not, the limitations period began to run when he was put on inquiry notice. Russell Packard, 108 P.3d at 748. That happened in November 2005, almost nine months before he filed his Complaint.

should affirm dismissal on the ground that, even if MLUDMA's thirty-day limitations periods are statutes of limitations, McCowin's claim is still untimely under MLUDMA.

D. The Court Should Affirm Dismissal of the Complaint Because McCowin Cannot Obtain a Permanent Injunction.

Finally, the Court should affirm dismissal because no material issues of fact exist, and Rasmussen/Hammond are entitled to judgment as a matter of law because McCowin could not legally obtain his sole requested relief – a permanent injunction.

A plaintiff is not entitled to a permanent injunction unless he establishes, as a threshold matter, that he has standing by demonstrating special damages, and, if so, further shows, *inter alia*, that he has a property right or protectable interest. Johnson v. Hermes Assocs., Ltd., 2005 UT 82, ¶ 13, 128 P.3d 1151. McCowin failed to demonstrate either element.

Here, McCowin claimed special damages as a result of the alleged impact on the character of the District. [R. 75-78.] Those are not "special damages." Special damages, for purposes of an injunction, are defined as damages "over and above the public injury" which may have been caused by the land-use decision. Johnson, 2005 UT 82, at ¶ 13. Special damages must either differ in kind or be substantially more than those of the general community. Id. Any damages McCowin suffered as a result of the alleged impact on the character of the District, however, are, as McCowin noted, suffered "generally" by every landowner in the district. [R. 77, 85.]

Further, McCowin has no property right or protectable interest. As more fully

discussed above, supra, Argument, Part I, McCowin has no property right or protectable interest in the outcome of the Commission's decision regarding the Application. McCowin likewise has no property right or protectable interest in the view from his back yard. See supra, Argument, Part I.

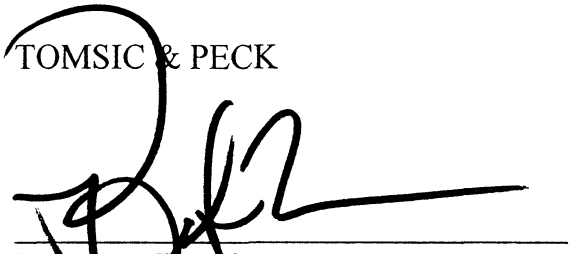
McCowin's inability to establish standing and the essential elements for permanent injunctive relief prevent him from obtaining the only relief he has requested. As such, the Court should also affirm dismissal based on McCowin's inability to establish entitlement to his only requested relief.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's Judgment dismissing McCowin's Complaint with prejudice.

DATED: July 2, 2007.

TOMSIC & PECK



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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2007, I caused two true and correct copies of the foregoing Brief of Appellees Barry Rasmussen & Mark Hammond to be mailed, postage prepaid, to the following:

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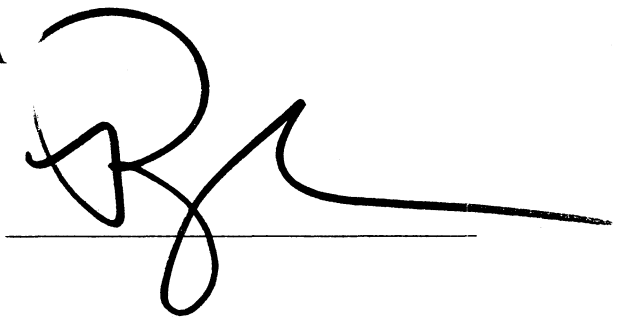

ADDENDUM

Exhibit #	Description
1	Sections of the Salt Lake City Code cited in this Brief.
2	McCowin v. Salt Lake City Corp., No. 060912420, Memorandum Decision (Oct. 25, 2006).
3	McCowin v. Salt Lake City Corp., No. 060912420, Judgment (Nov. 14, 2006).

Tab 1

21A.06.040 Board of adjustment.

A. Creation. The board of adjustment is created pursuant to the enabling authority granted by the Municipal Land Use Development and Management Act, Section 10-9-701 of the Utah Code Annotated.

B. Jurisdiction and Authority. The board of adjustment shall have the following powers and duties in connection with the implementation of this title:

1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in this Part II, Chapter 21A.16, Appeals of Administrative Decisions;

2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in this Part II, Chapter 21A.18, Variances;

3. Authorize special exceptions to the terms of this title pursuant to the procedures and standards set forth in Part V, Chapter 21A.52, Special Exceptions;

4. Make determinations regarding the existence, expansion or modification of nonconforming uses and noncomplying structures pursuant to the procedures and standards set forth in Part IV, Chapter 21A.38, Nonconforming Uses and Noncomplying Structures.

C. Membership. The board of adjustment shall consist of five members appointed by the mayor with the advice and consent of the city council from among qualified electors of the city in a manner that will provide balanced representation in terms of geographic, professional, neighborhood and community interests. Members may serve a maximum of two consecutive full terms of five years each. The terms of all members shall be so arranged that the term of one member will expire each year. In addition, the mayor, with the advice and consent of the city council, may appoint alternate members of the board of adjustment for a term not to exceed five years, to serve in the absence of a member or members of the board of adjustment. No more than two alternate members shall vote at any meeting of the board of adjustment at one time. The prior term of an alternate member who subsequently becomes a full-time member of the board of adjustment shall not prevent that member from serving two consecutive terms. Appointments to fill vacancies of members or alternate members shall be only for the unexpired portion of the term. Appointments for partial terms to fill vacancies shall not be included in the determination of any person's eligibility to serve two full consecutive terms.

D. Officers. The board of adjustment shall annually elect a chair and a vice-chair who shall serve for a term of one year each. The chair or the vice-chair may be elected to serve consecutive terms in the same office. The secretary of the board of adjustment shall be designated by the zoning administrator.

E. Meetings. The board of adjustment shall meet at least once a month.

F. Record of Proceedings. The proceedings of each meeting and public hearing shall be recorded on audio equipment. Records of confidential executive sessions shall be kept in compliance with the Government Records Access and Management Act. The audio

recording of each meeting shall be kept for a minimum of sixty days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty-day period, as determined by the board of adjustment. Copies of the tapes of such proceedings may be provided, if requested, at the expense of the requesting party. The board shall keep written minutes of its proceedings and records of all of its examinations and official actions. The board of adjustment may, at its discretion, have its proceedings contemporaneously transcribed by a court reporter.

G. Quorum and Vote. No business shall be conducted at a meeting of the board of adjustment without a quorum of at least three members, consisting of either three regular members, or one regular member and up to two alternate members. A simple majority of the voting members present at a meeting at which a quorum is present shall be required for any action except a decision on appeal to reverse an order, requirement, decision or determination of any administrative official or agency or to decide in favor of an appellant. In such case, a concurring vote of three members of the board of adjustment shall be necessary. Decisions of the board of adjustment shall become effective on the date that the vote is taken.

H. Public Hearings. The board of adjustment shall schedule and give public notice of all public hearings pursuant to the provisions of this Part II, Chapter 21A.10, General Application and Public Hearing Procedures.

I. Conflict of Interest. No member of the board of adjustment shall participate in the hearing or disposition of any matter in which that member has any conflict of interest prohibited by Title 2, Chapter 2.44 of the Salt Lake City Code. The board of adjustment may, by majority vote of the members present, allow a member, otherwise required to leave due to a conflict, to be present if required by special or unusual circumstances.

J. Removal of a Member. Any member of the board of adjustment may be removed by the mayor for violation of this title or any policies and procedures adopted by the board of adjustment following receipt by the mayor of a written complaint filed against the member. If requested by the member, the mayor shall provide the member with a public hearing conducted by a hearing officer appointed by the mayor.

K. Policies and Procedures. The board of adjustment shall adopt policies and procedures for the conduct of its meetings, the processing of applications and for any other purposes considered necessary for its proper functioning. (Ord. 26-95 § 2(3-4), 1995)

21A.06.050 Historic landmark commission.

A. Creation. The historic landmark commission is created pursuant to the enabling authority granted by the Historic District Act, Section 11-18-1, et seq., of the Utah Code Annotated, 1953.

B. General Purposes. The purposes of the historic landmark commission are to:

1. Preserve buildings and related structures of historic and architectural significance as part of the city's most important cultural, educational and economic assets;

2. Encourage proper development and utilization of lands and areas adjacent to historical areas and to encourage complimentary, contemporary design and construction;

3. Protect and enhance the attraction of the city's historic landmarks for tourists and visitors;

4. Safeguard the heritage of the city by providing for the protection of landmarks representing significant elements of its history;

5. Promote the private and public use of landmarks and the historical areas within the H historic preservation overlay district for the education, prosperity and general welfare of the people;

6. Increase public awareness of the value of historic, cultural and architectural preservation; and

7. Recommend design standards pertaining to the protection of H historic preservation overlay districts and landmark sites.

C. Jurisdiction and Authority. In addition to carrying out the general purposes set forth in subsection B of this section, the historic landmark commission shall:

1. Conduct surveys of significant historic, architectural, and cultural landmarks and historic districts within the city;

2. Petition the city council to designate identified structures, areas or resources as landmark sites or H historic preservation overlay districts;

3. Review and approve or deny an application for a certificate of appropriateness pursuant to the provisions of Part III, Chapter 21A.34, H Historic Preservation Overlay District;

4. Develop and participate in public education programs to increase public awareness of the value of historic, architectural and cultural preservation;

5. Review and approve or deny applications for the demolition of structures in the H historic preservation overlay district pursuant to Part III, Chapter 21A.34;

6. Recommend to the planning commission the boundaries for the establishment of an H historic preservation overlay district and landmark sites;

7. Make recommendations when requested by the planning commission, the board of adjustment or the city council, as appropriate, on applications for zoning amendments,

conditional uses and special exceptions involving H historic preservation overlay districts and landmark sites;

8. Make recommendations to the city council concerning the utilization of state, federal or private funds to promote the preservation of landmark sites and H historic preservation overlay districts within the city;

9. Make recommendations to the city council regarding the acquisition of landmark structures or structures eligible for landmark status where preservation is essential to the purposes of Part III, Chapter 21A.34, Section 21A.34.010, H historic preservation overlay district, and where private preservation is infeasible;

10. Make recommendations to the planning commission in connection with the preparation of the general plan of the city; and

11. Make recommendations to the city council on policies and ordinances that may encourage preservation of buildings and related structures of historic and architectural significance.

D. Membership. The historic landmark commission shall consist of not less than nine nor more than fifteen voting members appointed by the mayor, with the advice and consent of the city council in a manner providing balanced geographic, professional, neighborhood and community interests representation. The director of the planning division (or the planning director's designated representative) shall serve as an ex officio member without vote. Voting members of the commission may serve a maximum of two consecutive full terms of three years each. The terms shall be staggered such that three members are appointed each year. The mayor shall appoint a new commission member to fill any vacancy that might arise and such appointment shall not be included in the determination of any person's eligibility to serve two consecutive full terms.

E. **Qualifications Of Members:** Each voting member shall be a resident of the city interested in preservation and knowledgeable about the heritage of the city. Members shall be selected so as to provide, at a minimum, representation from the following groups of experts and interested parties:

1. One licensed architect representing the Utah Society, American Institute of Architects;

2. One member representing the Utah State Historical Society;

3. One member representing the Utah Heritage Foundation;

4. Six (6) citizens at large;

5. Each historic district in the city shall be represented on the historic landmark commission by a member either residing in or owning property in that district.

F. **Officers:** The historic landmark commission shall annually elect a chair and a vice chair who shall serve for a term of one year each. The chair or vice chair may be elected to serve consecutive terms in the same office. The secretary of the historic landmark commission shall be designated by the planning director.

G. **Meetings:** The historic landmark commission shall meet at least once per month.

H. **Record Of Proceedings:** The proceedings of each meeting and public hearing shall be recorded on audio equipment. Records of confidential executive sessions shall be kept in compliance with the government records access and management act. The audio recording of each meeting shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the historic landmark commission. Copies of the tapes of such proceedings may be provided, if requested, at the expense of the requesting party. The historic landmark commission shall keep written minutes of its proceedings and records of all of its examinations and official actions.

I. **Quorum And Vote:** No business shall be conducted at a meeting of the historic landmark commission without a quorum. A majority of the voting members of the historic landmark commission constitutes a quorum. All actions of the historic landmark commission shall be represented by a vote of the membership. A simple majority of the voting members present at a meeting at which a quorum is present shall be required for any action taken. The decision of the historic landmark commission shall become effective on the date the vote is taken.

J. **Public Hearings:** The historic landmark commission shall schedule and give public notice of all public hearings pursuant to the provisions of chapter 21A.10 of this part.

K. **Conflicts Of Interest:** No member of the historic landmark commission shall participate in the hearing or disposition of any matter in which that member has a conflict of interest prohibited by chapter 2.44 of this code. The historic landmark commission may, by majority vote of the members present, allow a member, otherwise required to leave due to a conflict, to be present if required by special or unusual circumstances.

L. **Removal Of A Member:** Any member of the historic landmark commission may be removed by the mayor for violation of this title or any policies and procedures adopted by the historic landmark commission following receipt by the mayor of a written complaint filed against the member. If requested by the member, the mayor shall provide the member with a public hearing conducted by a hearing officer appointed by the mayor.

M. **Policies And Procedures:** The historic landmark commission shall adopt policies and procedures for the conduct of its meetings, the processing of applications and for any other purposes considered necessary for its proper functioning. (Ord. 26-95 § 2(3-5), 1995)

21A.10.020 Public Hearing Notice Requirements:

Providing all of the information necessary for notice of all public hearings required under this title shall be the responsibility of the applicant and shall be in the form established by the zoning administrator and subject to the approval of the zoning administrator pursuant to the standards of this section. (See diagram summarizing public hearing notice requirements at the end of this section.)

A. **Special Exception Permits, Variances And Appeals Of Zoning Administrator Decisions:** The board of adjustment shall hold at least one public hearing to review, consider and approve, approve with conditions, or deny an application for a special exception or for a variance, or to consider an appeal from a decision of the zoning administrator. Such hearing shall be held after the following public notification:

1. **Publication:** At least fourteen (14) calendar days in advance of each public hearing on an application for a special exception or for a variance, or to consider an appeal from a decision of the zoning administrator, the city shall publish a notice of such public hearing in a newspaper of general circulation in Salt Lake City.

2. **Mailing:** Notice by first class mail shall be provided a minimum of fourteen (14) calendar days in advance of the public hearing to all owners of the land, as shown on the latest published property tax records of the county assessor, included in the application for a special exception, variance, or an appeal of a decision by the zoning administrator, as well as to all owners of land, as shown on the latest published property tax records of the county assessor, within eighty five feet (85') or three hundred feet (300') if the proposal involves construction of a new principal building (exclusive of intervening streets), of the periphery of the land subject to the application for a special exception for a variance, or a decision by the zoning administrator. Notice shall be given to each individual property owner if an affected property is held in condominium ownership.

3. **Posting:** The land subject to an application shall be posted by the city with a sign giving notice of the public hearing at least ten (10) calendar days in advance of the public hearing.

a. **Location:** One notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one sign shall be posted on each public street. The sign(s) shall be located on the property subject to the request or petition and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the application.

b. **Removal:** The sign(s) shall be removed by the city after the decision is rendered on the application. If the sign is removed through no fault of the applicant before the hearing, such removal shall not be deemed a failure to comply with the standards, or be grounds to challenge the validity of any decision made on the application.

4. **Notification To Recognized And Registered Organizations:** The city shall give notification a minimum of fourteen (14) calendar days in advance of the public hearing by first class mail to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code.

B. **Conditional Uses:** The planning commission shall hold at least one public hearing to review, consider and approve, approve with conditions or deny an application for a conditional use after the following public notification:

1. **Mailing:** Notice by first class mail shall be provided a minimum of fourteen (14) calendar days in advance of the public hearing, to all owners of the land, as shown on the latest published property tax records of the county assessor, included in the application for a conditional use, as well as to all owners of land, as shown on the latest published property tax records of the county assessor, within three hundred feet (300') (exclusive of intervening streets), of the periphery of the land subject to the application for a conditional use. Notice shall be given to each individual property owner if an affected property is held in condominium ownership.

2. **Posting:** The land subject to an application shall be posted by the city with a sign giving notice of the public hearing at least ten (10) calendar days in advance of the public hearing.

a. **Location:** One notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one sign shall be posted on each public street. The sign(s) shall be located on the property subject to the request or petition and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the application.

b. **Removal:** The sign shall be removed by the city after the decision is rendered on the application. If the sign is removed through no fault of the applicant before the hearing, such removal shall not be deemed a failure to comply with the standards, or be grounds to challenge the validity of any decision made on the application.

3. **Notification To Recognized And Registered Organizations:** The city shall give notification a minimum of fourteen (14) calendar days in advance of the public hearing by first class mail to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code.

C. **Conditional Building And Site Design Review:** The planning commission shall consider requests for conditional building and site review at a public hearing if there is an expression of interest after providing notice as follows: The planning director shall provide written notice a minimum of fourteen (14) days in advance of the requested action to all owners of the land subject to the application, as shown on the latest published property tax records of the county assessor, included in the application, as well as to the planning commission and to all owners of land as shown on the latest published property tax records of the county assessor adjacent to and contiguous with the land subject to the application. The city shall also provide notification to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code. The land subject to the application shall be posted by the city with a sign giving notice of the pending action at least ten (10) calendar days in advance of the action. At the end of the fourteen (14) day notice period, if there are requests for a public hearing, the planning commission will schedule a public hearing and consider the issue; if there are no requests for a public hearing, the planning commission is authorized to direct the planning director to address the issue administratively.

If the planning commission holds a public hearing, the planning director shall provide written

notice a minimum of fourteen (14) days in advance of the public hearing to all owners of the land subject to the application, as shown on the latest published property tax records of the county assessor, included in the application, as well as to the planning commission and to all owners of land as shown on the latest published property tax records of the county assessor adjacent to and contiguous with the land subject to the application. The city shall also provide notification to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code. The land subject to the application shall be posted by the city with a sign giving notice of the pending action at least ten (10) calendar days in advance of the public hearing.

In the event that the city and applicant are aware of advanced interest in the project. The applicant may request to forgo the time frame for determining interest and request a public hearing with the planning commission.

D. **Amendments To The Zoning Map Or The Text Of This Title:** The planning commission, the city council and the historic landmark commission where applicable, shall each hold at least one public hearing on an application for an amendment to the text of this title or the zoning map. At its public hearing, the planning commission, and the historic landmark commission where applicable, shall review, consider and recommend to the city council that the council adopt, modify or reject the proposed amendment. At its public hearing, the city council shall adopt, modify or reject the proposed amendment. Public notification shall be provided as follows:

1. **Publication (City Council Only):** At least fourteen (14) calendar days in advance of the city council's public hearing on an application for an amendment to the text of this title or the zoning map, the city shall publish a notice of such public hearing in a newspaper of general circulation in Salt Lake City.

2. **Mailing:** Notice by first class mail shall be provided a minimum of fourteen (14) calendar days in advance of the public hearing(s) before the planning commission, city council and the historic landmark commission, where applicable, to all owners of the land as shown on the latest published property tax records of the county assessor, included in the application for a zoning amendment as well as to all owners of land, as shown on the latest published property tax records of the county assessor, within three hundred feet (300') (exclusive of intervening streets), of the periphery of the land subject to the application for an amendment to the zoning map. Notice for amendments to the text of this title shall not require a mailing of notice to property owners. Required notice shall be given to each individual property owner if an affected property is held in condominium ownership.

3. **Posting:** The property(ies) subject to an application for an amendment to the zoning map shall be posted by the city with a notice on a sign of the planning commission, historic landmark commission, and city council public hearing at least ten (10) calendar days in advance of the public hearings.

a. **Location:** One notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one sign shall be posted on each public street. The sign(s) shall be located on the property subject to the request or petition and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. If the owner of the property is not the applicant and the owner objects to the petition, then the sign may be placed on the public right of way in front of the property. Where the land does not have frontage on a public street, signs shall be

erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the application.

b. **Removal:** The sign shall be removed by the city after the decision is rendered on the application. If the sign is removed through no fault of the applicant before the hearing, such removal shall not be deemed a failure to comply with the standards, or be grounds to challenge the validity of any decision made on the application.

c. **Exemption:** This posting requirement shall not apply to applications for amendments involving an H historic preservation overlay district, applications for a certificate of appropriateness or applications for comprehensive rezonings of areas involving multiple parcels of land.

4. **Notification To Recognized And Registered Organizations:** The city shall give notification a minimum of fourteen (14) calendar days in advance of the public hearing by first class mail to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code.

E. **Certificates Of Appropriateness For Landmark Sites Or Contributing Structures Located Within An H Historic Preservation Overlay District:** The historic landmark commission shall hold at least one public hearing to review, consider and approve, approve with conditions, or deny an application for a certificate of appropriateness for alteration, new construction or demolition of a landmark site or contributing structure(s) located in the H historic preservation overlay district. No such public hearing shall be required in the event the application is to be administratively approved subject to subsection 21A.34.020F1 of this title. Where a public hearing is required, such hearing shall be held after the following public notification:

1. **Mailing:** Notice by first class mail shall be provided a minimum of fourteen (14) calendar days in advance of the public hearing, or determination of noncontributing status involving demolition, to all owners of the land, as shown on the latest published property tax records of the county assessor, included in the application for certificates of appropriateness for new construction, relocation and demolition, as well as to all owners of land, as shown on the latest published property tax records of the county assessor, within eighty five feet (85') for certificates of appropriateness for alterations and three hundred feet (300') for certificates of appropriateness for new construction, relocation and demolition (exclusive of intervening streets), of the periphery of the land subject to the application of a landmark site or contributing structure(s) in the H historic preservation overlay district. Notice shall be given to each individual property owner if an affected property is held in condominium ownership.

2. **Posting:** The land subject to an application for demolition, or relocation of a landmark site or contributing structure(s) located in the H historic preservation overlay district shall be posted by the city with a notice on a sign of the public hearing at least ten (10) calendar days in advance of the public hearing.

a. **Location:** One notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one sign shall be posted on each public street. The sign(s) shall be located on the property subject to the request or petition and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest street right of way with an attached notation indicating

generally the direction and distance to the land subject to the application.

b. **Removal:** The sign shall be removed by the city after the decision is rendered on the application. If the sign is removed through no fault of the applicant before the hearing, such removal shall not be deemed a failure to comply with the standards, or be grounds to challenge the validity of any decision made on the application.

3. **Notification To Recognized And Registered Organizations:** The city shall give notification a minimum of fourteen (14) calendar days in advance of the public hearing by first class mail to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code.

F. **Determination Of Noncontributing Status Within An H Historic Preservation Overlay District:** Prior to the approval of an administrative decision for a certificate of appropriateness for demolition of a noncontributing structure, the planning director shall provide written notice of the determination of noncontributing status of the property to all owners of the land, as shown on the latest published property tax records of the county assessor, included in the application for determination of noncontributing status, as well as to the historic landmark commission and to all owners of land as shown on the latest published property tax records of the county assessor within eighty five feet (85') (exclusive of intervening streets) of the land subject to the application. At the end of the fourteen (14) day notice period, the planning director shall either issue a certificate of appropriateness for demolition or refer the application to the historic landmark commission.

G. **Contents Of Notice For Mailing:** The notice for mailing for any public hearing required pursuant to subsections A through E of this section shall state the substance of the application and the date, time and place of the public hearing, and the place where such application may be inspected by the public. The notice shall also advise that interested parties may appear at the public hearing and be heard with respect to the application.

SUMMARY CHART FOR PUBLIC HEARING NOTICE REQUIREMENTS

SPECIAL EXCEPTION PERMITS / VARIANCES / APPEALS OF ZONING ADMINISTRATOR DECISIONS		
PUBLICATION	MINIMUM 14 DAYS BEFORE HEARING	Notice in SLC newspaper of general circulation.
MAILING	MINIMUM 14 DAYS BEFORE HEARING	For existing structures: To all owners of land within 85 feet of edge of property excluding streets and alleys. For new construction of principal buildings : To all owners of land within 300 feet of edge of property excluding streets and alleys. To any organization entitled to receive notice per Ch. 2.62 of this code.
POSTING	MINIMUM 10 DAYS BEFORE HEARING	One sign for each 500 ft. of frontage along public street or on nearest street ROW if property doesn't front on public street. Sign set back from front property line maximum of 25 ft. Must be visable.
CONDITIONAL USES - INCLUDING PROJECTS REQUIRING DESIGN REVIEW		
[illegible]	[illegible]	To all owners of land within 300 ft. of edge of property (excluding streets and alleys).

MAILING	MINIMUM 14 DAYS BEFORE HEARING	To any organization entitled to receive notice per Ch. 2.62 of this code.
POSTING	MINIMUM 10 DAYS BEFORE HEARING	One sign for each 500 ft. of frontage along public street or on nearest street ROW if property doesn't front on public street. Sign set back from front property line maximum of 25 ft. Must be visable.

CERTIFICATE OF APPROPRIATENESS FOR LANDMARK SITES AND CONTRIBUTING STRUCTURES

MAILING	MINIMUM 14 DAYS BEFORE HEARING	For alterations of structures: To all owners of land within 85 feet of edge of property excluding streets and alleys. For new construction and demolition : To all owners of land within 300 feet of edge of property excluding streets and alleys To any organization entitled to receive notice per Ch. 2.62 of this code.
POSTING	MINIMUM 10 DAYS BEFORE HEARING	One sign for each 500 ft. of frontage along public street or on nearest street ROW if property doesn't front on public street. Sign set back from front property line maximum of 25 ft. Must be visable.

ZONING ORDINANCE TEXT AND ZONING MAP AMENDMENTS

PUBLICATION	MINIMUM 14 DAYS BEFORE HEARING	City Council only- Notice in SLC newspaper of general circulation.
MAILING	MINIMUM 14 DAYS BEFORE HEARING	To all owners of land within 300 ft. of edge of property (excluding streets and alleys). To any organization entitled to receive notice per Ch. 2.62 of this code.
POSTING	MINIMUM 10 DAYS BEFORE HEARING	One sign for each 500 ft. of frontage along public street or on nearest street ROW if property doesn't front on public street. Sign set back from front property line maximum of 25 ft. Must be visable.

(Ord. 3-05 §§ 1,2, 2005: Ord. 35-99 §§ 2-7, 1999: Ord. 26-95 § 2(5-2), 1995)

21A.16.010 Authority:

As described in section 21A.06.040 of this part, the board of adjustment should hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title. (Ord. 90-05 § 2 (Exh. B), 2005: Ord. 26-95 § 2(8-1), 1995)

21A.16.030 Procedure:

Appeals of administrative decisions to the board of adjustment shall be taken in accordance with the following procedures:

A. **Notice Of Appeal:** Notice of appeal shall be filed within thirty (30) days of the administrative decision. The appeal shall be filed with the zoning administrator and shall specify the decision appealed and the reasons the appellant claims the decision to be in error.

B. **Fees:** Nonrefundable application and hearing fees established pursuant to the fee schedule shall accompany the notice of appeal.

C. **Stay Of Proceeding:** An appeal to the board of adjustment shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination or interpretation was made unless the zoning administrator certifies in writing to the board of adjustment, after the notice of appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. **Public HearingNotice:** Upon receipt of the notice of appeal, the board of adjustment shall give notice and hold a public hearing in accordance with the requirements of chapter 21A.10 of this part.

E. **Action By The Board Of Adjustment:** Following the hearing, the board of adjustment shall render its decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. The board of adjustment may reverse or materially modify the zoning administrator's or the administrative hearing officer's decision only if at least three (3) members of the board of adjustment vote in favor of such an action. A decision by the board of adjustment shall become effective the date the vote is taken.

F. **Notification Of Decision:** Notification of the decision of the board of adjustment shall be sent by mail to all parties of the proceeding within ten (10) days of the board of adjustment's decision. (Ord. 90-05, 2005: Ord. 26-95 § 2(8-3), 1995)

21A.16.040 Appeal Of Decision:

Any person adversely affected by any decision of the board of adjustment may, within thirty (30) days after the decision is made, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 26-95 § 2(8-4), 1995)

21A.62.010 Definitions Generally:

For the purposes of this title, certain terms and words are defined and are used in this title in that defined context. Any words in this title not defined in this chapter shall be as defined in Webster's collegiate dictionary. (Ord. 26-95 § 2(31-1), 1995)

21A.62.040 Definitions:

For the purposes of this title, the following terms shall have the following meanings:

"Abutting" means adjacent or contiguous including property separated by an alley, a private right of way or a utility strip.

"Access taper" means the transitional portion of a drive access that connects a driveway to a parking pad located within a side yard.

"Accessory building or structure" means a subordinate building or structure, located on the same lot with the main building, occupied by or devoted to an accessory use. When an accessory building or structure is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

"Accessory guest and servants' quarters" means accessory living quarters with or without kitchen facilities located on the same lot as the principal use and meeting all yard and bulk requirements of the applicable district.

"Accessory lot" means a lot adjoining a principal lot under a single ownership.

Accessory Structure: See definition of Accessory Building Or Structure.

"Accessory use" means a use that:

A. Is subordinate in area, extent and purpose to, and serves a principal use;

B. Is customarily found as an incident to such principal use

C. Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use

D. Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and

E. Is under the same ownership or control as the principal use.

"Administrative decision" means any order, requirement, decision, determination or interpretation made by the zoning administrator in the administration or the enforcement of this title.

"Agricultural use" means the use of a tract of land for growing crops in the open, dairying, pasturage, horticulture, floriculture, general farming uses and necessary accessory uses, including the structures necessary for carrying out farming operations; provided, however, such agricultural use shall not include the following uses:

A. Commercial operations or accessory uses which involve retail sales to the general public unless the use is specifically permitted by this title; and

B. The feeding of garbage to animals, the raising of poultry or furbearing animals as a principal use, or the operation or maintenance of commercial stockyards, or feed yards, slaughterhouses or rendering facilities.

"Alley" means a public or private right of way that affords a service access to abutting property.

"Alteration", as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side, by increasing in height, or the moving from one location or position to another.

"Alternative parking property" means the property for which an alternative parking requirement pursuant to section 21A.44.030 of this title is proposed.

"Amusement park" means a commercial facility or operation that primarily offers entertainment in the form of rides and games.

"Ancillary mechanical equipment" means supplemental equipment, attached or detached, including, but not limited to, equipment for the provision of services for heat, ventilation, air conditioning, electricity, plumbing, telephone and television.

"Animal pound" means a public or licensed private facility to temporarily detain and/or dispose of stray dogs, cats and other animals.

"Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves external to or attached to the exterior of any building.

Antenna, Low Power Radio Service: "Low power radio service antenna" means a transmitting or receiving device used in telecommunications that radiates or captures radio signals.

Antenna, Low Power Radio ServiceMonopole With Antennas And Antenna Support Structures Greater Than Two Feet In Width: "Low power radio service antennamonopole with antennas and antenna support structures greater than two feet in width" means a self-supporting monopole tower on which antennas and antenna support structures exceeding two feet (2') in width are placed. The antenna and antenna support structures may not exceed thirteen feet (13') in width or eight feet (8') in height.

Antenna, Low Power Radio ServiceMonopole With Antennas And Antenna Support Structures Less Than Two Feet In Width: "Low power radio service antennamonopole with antennas and antenna support structures less than two feet in width" means a monopole with antennas and antenna support structures not exceeding two feet (2') in width. Antennas and antenna support structures may not exceed ten feet (10') in height.

Antenna, Roof Mounted: "Roof mounted antenna" means an antenna or series of individual antennas mounted on a flat roof, mechanical room or penthouse of a building.

Antenna, Satellite Dish: "Satellite dish antenna" means a type of antenna capable of receiving, among other signals, television transmission signals, and which has a disk shaped receiving device, excluding wall mountable antennas with a surface size less than four hundred (400) square inches, projecting no more than two feet (2').

Antenna, TV: "TV antenna" means a type of antenna used to receive television transmission signals, but which is not a satellite dish antenna.

Antenna, Wall Mounted: "Wall mounted antenna" means an antenna or series of individual antennas mounted against the vertical wall of a building.

Antenna, Whip: "Whip antenna" means an antenna that is cylindrical in shape. Whip antennas can be directional or omnidirectional and vary in size depending upon the frequency and gain for which they are designed.

Apartment: See definition of Dwelling, Multi-Family.

"Arcade" means range of arches supporting a roofed area along with a column structure, plain or decorated over a walkway adjacent to or abutting a row of retail stores on one side or both.

"Architecturally incompatible" means buildings or structures which are incongruous with adjacent and nearby development due to dissimilarities in style, materials, proportions, size, shape and/or other architectural or site design features.

"Art gallery" means an establishment engaged in the sale, loan or display of paintings, sculpture or other works of art. The term "art gallery" does not include libraries or museums.

"Art studio" means a building or portion of a building where an artist or photographer creates works of art.

"Assisted living facility (large)" means a facility licensed by the state of Utah that provides a combination of housing and personalized healthcare designed to respond to the individual needs of more than six (6) individuals who require help with the activities of daily living, such as meal preparation, personal grooming, housekeeping, medication, etc. Care is provided in a professionally managed group living environment in a way that promotes maximum independence and dignity for each resident.

"Assisted living facility (small)" means a facility licensed by the state of Utah that provides a combination of housing and personalized healthcare designed to respond to the individual needs of up to six (6) individuals who require help with the activities of daily living, such as meal preparation, personal grooming, housekeeping, medication, etc. Care is provided in a professionally managed group living environment in a way that promotes maximum independence and dignity for each resident.

"Auditorium" means a multipurpose assembly facility that is designed to accommodate conventions, live performances, trade shows, sports events and other such events.

"Automatic amusement device" means any machine, apparatus or device which, upon the insertion of a coin, token or similar object, operates or may be operated as a game or contest of skill or amusement and for the play of which a fee is charged, or a device similar to any such machine, apparatus or device which has been manufactured, altered or modified so that operation is controlled without the insertion of a coin, token or similar object. The term does not include coin operated televisions, ride machines designed primarily for the amusement of children, or vending machines not incorporating features of gambling or skill.

"Automobile" means any vehicle propelled by its own motor and operating on ordinary roads. As used herein, the term includes passenger cars, light trucks (1 ton or less),

motorcycles, recreation vehicles and the like.

Automobile Repair, Major: "Major automobile repair" means any use principally engaged in repairing of automobiles, including any activities excluded in the definition of Automobile Repair, Minor.

Automobile Repair, Minor: "Minor automobile repair" means a use engaged in the repair of automobiles involving the use of three (3) or fewer mechanics' service bays, where all repairs are performed within an enclosed building, and where not more than ten (10) automobiles, plus one automobile per employee, are parked on site at any one time including, but not limited to, those permitted as gas stations. Auto body repairs and drive train repair are excluded from this definition.

"Automobile salvage and recycling" means the dismantling of automobiles, including the collection and storage of parts for resale, and/or the storage of inoperative automobiles for future salvage or sale. Such activities may be conducted outdoors or within fully enclosed buildings.

Bakery, Commercial: "Commercial bakery" means a use involving the baking of food products for sale principally to the wholesale trade, not directly to the consumer.

"Base zoning district" means a zoning district that reflects the four (4) basic geographically based land use categories in the cityresidential areas, commercial areas, manufacturing areas and the downtownwith appropriate regulations and development standards to govern the uses in these districts.

"Basement" means a story wherein each exterior wall is fifty percent (50%) or more below grade. For purposes of establishing building height, a basement shall not count toward the maximum number of stories allowed. The exposed portion of the basement wall shall not exceed five feet (5').

"Bed and breakfast" means a building constructed originally as a single-family dwelling that is occupied by the property owner who offers lodging in up to seven (7) rooms on a nightly or weekly basis to paying guests. A bed and breakfast may provide breakfast to overnight guests only and shall not provide other meals.

"Bed and breakfast inn" means a building that is designed to accommodate up to eighteen (18) rooms for lodging on a nightly or weekly basis to paying guests. A bed and breakfast inn may provide breakfast from internal kitchen facilities to overnight guests and their guests only other than meals that are occasionally catered from off site establishments. The owner of the bed and breakfast inn may prepare meals on site or receive catered meals for private use.

"Bed and breakfast manor" means a building designed to accommodate up to thirty (30) rooms for lodging on a nightly or weekly basis to paying guests. A bed and breakfast manor may provide breakfast from internal kitchen facilities to overnight guests and their guests only other than meals that are occasionally catered from off site establishments. The owner of the bed and breakfast manor may prepare meals on site or receive catered meals for private use. Restaurants operating in conjunction with a bed and breakfast manor must be approved under a separate restaurant license.

"Block corner" means the ninety degree (90°) intersection of private property adjacent to the intersection of two (2) public street rights of way both of which are at least one hundred thirty two feet (132') wide. When applied to corner buildings, the provisions of this definition shall extend to one hundred sixty five feet (165') from the block corner on the street face and one hundred sixty five feet (165') in depth.

"Block face" means all of the lots facing one side of a street between two (2) intersecting streets. Corner properties shall be considered part of two (2) block faces, one for each of the two (2) intersecting streets. In no case shall a block face exceed one thousand feet (1,000').

"Board of adjustment" means the board of adjustment of Salt Lake City, Utah.

"Boarding house" means a building other than a hotel or motel, with three (3) or more bedrooms where direct or indirect compensation for lodging and/or kitchen facilities, not occupied in guest-rooms, or meals are provided for boarders and/or roomers not related to the head of the household by marriage, adoption, or blood. Rentals must be on at least a monthly basis.

"Brewpub" means a restaurant type establishment that also has a beer brewery, producing beer in batch sizes not less than seven (7) U.S. barrels (31 gallons), on the same property which produces, except as provided in subsection 6.08.081B2 of this code, only enough beer for sale and consumption on site or for retail carryout sale in containers holding less than two liters (2 l) or for wholesale as outlined in subsections D and E of this definition. Automated bottle or canning production is prohibited. At least fifty percent (50%) of the beer sold shall be brewed on the premises. Revenue from food sales shall constitute at least fifty percent (50%) of the total business revenues, excluding retail carryout sales of beer and the sales allowed pursuant to subsection 6.08.081B2 of this code. Brewpubs are limited to a total brewing capacity of two thousand five hundred (2,500) barrels per year or one hundred twenty (120) barrels of fermentation at any one time, whichever is less. Brewpubs may sell beer in keg (larger than 2 liters) containers for the following purposes and in the following amounts:

A. An unlimited number of kegs (not to exceed 2,500 barrel capacity) for "brew fests" which, for the purpose of this definition, means events, the primary purpose of which is the exposition of beers brewed by brewpubs and microbreweries, which include the participation of at least three (3) such brewers;

B. No more than one hundred (100) kegs per year (not to exceed 2,500 barrel capacity) to events sponsored by charitable organizations exempt from federal income tax pursuant to 26 USC, section 501(c)(3) or its successor; and

C. No more than one hundred (100) kegs per year (not to exceed 2,500 barrel capacity) to events operating under a single event license from the state and the city where the purpose of the event is not for commercial profit and where the beer is not wholesaled to the event sponsor but is, instead, dispensed by employees of the brewpub;

D. Unlimited distribution to other restaurants of same ownership or control (not to exceed 2.500 barrel capacity). "Ownership or control" means more than fifty percent (50%) ownership in the actual business or controlling interest in any management partnership; and

E. No more than five hundred (500) barrels for wholesale distribution (not to exceed 2,500 barrel capacity).

Buffer Yard: See definition of Landscape buffer.

"Buildable area" means the portion of the lot remaining after required yards have been provided and after the limitations of any pertinent environmental regulations have been applied. Buildings may be placed in any part of the buildable area, but if there are limitations on percent of the lot which may be covered by buildings, some open space may be required within the buildable area.

"Building" means a structure with a roof, intended for shelter or enclosure.

Building, Accessory: See definition of Accessory Building Or Structure.

"Building connection" means two (2) or more buildings which are connected in a substantial manner or by common interior space including internal pedestrian circulation. Where two (2) buildings are attached in this manner, they shall be considered a single building and shall be subject to all yard requirements of a single building. Determination of building connection shall be through the site plan review process.

"Building coverage" means that percentage of the lot covered by principal or accessory buildings.

Building, Front Line Of: "Front line of building" means the line of that face of the building nearest the front or corner side lot line of the lot. This face includes sun parlors, bay windows, and covered and/or uncovered porches, whether enclosed or unenclosed, but does not include uncovered steps less than four feet (4') above grade.

"Building heightin the FR-1, FR-2, FR-3, FP, R-1/5,000, R-1/7,000, R-1/12,000, R-2, SR-1 and SR-3 districts" shall be the vertical distance between the top of the roof and the grade of the site, as described in subsection 21A.24.010O1a of this title, measured at any given point of building coverage. (See illustration in section 21A.62.050 of this chapter.)

"Building heightoutside FR, FP, R-1, R-2 and SR districts" means the vertical distance, measured from the average elevation of the finished lot grade at each face of the building, to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof. (See illustration in section 21A.62.050 of this chapter.)

"Building line" means a line dividing a required yard from other portions of a lot.

"Building material distributor" means a type of wholesale distributor supplying the building materials industry, but excluding retail outlets conducted in a warehouse format.

"Building official" means the building official of the department of community development.

Building, Principal: "Principal building" means a building that is used primarily for the conduct of the principal use.

Building, Public: "Public building" means a building owned and operated, or owned and intended to be operated by a public agency of the United States of America or the state of

Utah, or any of its subdivisions.

"Bulk" means the size and setbacks of the buildings or structures and the location of same with respect to one another, and including: a) height and area of buildings; b) location of exterior walls in relation to lot lines, streets or other buildings; c) gross floor area of buildings in relation to lot areas (floor area ratio); d) all open spaces allocated to buildings; e) amount of lot area required for each dwelling unit; and f) lot coverage.

"Business" means any occupation, employment or enterprise which occupies time, attention, labor and/or materials for compensation whether or not merchandise is exhibited or sold, or services are offered.

Business, Mobile: "Mobile business" means a business that conducts all or part of its operations on premises other than its own. The term "mobile business" shall not include any business involved in construction, home or building improvement, landscape construction, surveying or medical related activities, including veterinary services. The simple delivery of goods shall not constitute a mobile business.

"Business park" means a business district planned and developed as an optimal environment for business occupants while maintaining compatibility with the surrounding community.

"Carpool" means a mode of transportation where two (2) or more persons share a car ride to or from work.

"Carport" means a garage not completely enclosed by walls or doors. For the purpose of this title, a carport shall be subject to all of the regulations prescribed for a garage.

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

"Certificate of appropriateness" means a certification by the historic landmark commission stating that proposed work on historic property is compatible with the historic character of the property and of the historic preservation overlay district in which it is located.

"Certificate of occupancy" means an official authorization to occupy a structure as issued by the building official.

Certificate, Zoning: "Zoning certificate" means a written certification that a structure, use or parcel of land is, or will be, in compliance with the requirements of this title.

"Change of use" means the replacement of an existing use by a new use, or a change in the nature of an existing use which does not increase the size, occupancy, or site requirements. A change of ownership, tenancy, name or management, or a change in product or service within the same use classification where the previous nature of the use, line of business, or other function is substantially unchanged is not a change of use. (See also definition of Land Use Type (Similar Land Use Type).)

"Charity dining hall" means a sit down dining facility operated by a nonprofit organization to feed, without charge, the needy and the homeless.

"Chemical manufacturing" means a use engaged in making chemical products from raw or partially finished materials, but excluding chemical wholesale distributors.

"City council" means the city council of Salt Lake City, Utah.

"College or university" means an institution accredited by the state providing full time or part time education beyond the high school level for a BA, BS or associate degree, including any lodging rooms or housing for students or faculty. (See also definition of Schools.)

"Commercial districts" means those districts listed in subsection 21A.22.010B of this title.

"Commercial indoor recreation" means public or private recreation facilities, tennis or other racquet courts, swimming pools, bowling alleys, skating rinks, or similar uses which are enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. The term "commercial indoor recreation" shall include any accessory uses, such as snack bars, pro shops, and locker rooms, which are designed and intended primarily for the use of patrons of the principal recreational use. The term "commercial indoor recreation" shall not include theaters, cultural facilities, commercial recreation centers, massage parlors, or any use which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter in part III of this title for each category of zoning district or districts.

"Commercial laundry" means an establishment primarily engaged in the provision of laundering, dry cleaning, or dyeing services other than retail services establishments. Typical uses include bulk laundry and cleaning plants, diaper services, and linen supply services.

"Commercial outdoor recreation" means public or private golf courses, golf driving ranges, swimming pools, tennis courts, ball fields, ball courts, fishing piers, skateboarding courses, water slides, mechanical rides, go-cart or motorcycle courses, raceways, drag strips, stadiums, marinas, overnight camping, or gun firing ranges, which are not enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. The term "commercial outdoor recreation" shall include any accessory uses, such as snack bars, pro shops, and clubhouses which are designed and intended primarily for the use of patrons of the principal recreational use.

"Commercial service establishment" means a building, property, or activity, of which the principal use or purpose is the provision of services for the installation and repair, on or off site, of equipment and facilities that support principal and accessory uses to commercial and consumer users. Commercial services establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

"Commercial vehicle" means a vehicle which exceeds one ton capacity and taxis. This shall include, but not be limited to, the following: buses, dump trucks, limousines, roll back tow trucks, stake body trucks, step vans, taxis, tow trucks and tractor trailers.

"Commercial video arcade" means a principal use that contains ten (10) or more automatic

amusement devices.

"Common areas, space and facilities" means the property and improvements of the condominium project, or portions thereof, conforming to the definition set forth in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Communication tower" means a tower structure used for transmitting a broadcast signal or for receiving a broadcast signal (or other signal) for retransmission. A communication tower does not include "ham" radio transmission antenna.

"Community garden" means the exclusive use of a vacant lot for the growing of garden produce by a nonprofit organization in which food produced is consumed by local needy individuals and families.

"Community recreation center" means a place, structure, area, or other facility used for and providing social or recreational programs generally open to the public and designed to accommodate and serve segments of the community.

"Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored or applied to the land without adversely affecting human health or the environment.

"Concept development plan" means a conceptual plan submitted for review and comment in order to obtain guidance from the city regarding how city requirements would apply to a proposed planned development.

"Concrete manufacturing" means a use engaged in making and delivering "ready mix" type concrete from batch plant operations. This use excludes cement manufacturing, such as Portland cement, which is an ingredient in concrete manufacturing.

"Condominiumcondominium project and condominium unit" means property or portions thereof conforming to the definitions set forth in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Condominium ownership act of 1975 or act" means the provisions of chapter 8 of title 57 of Utah Code Annotated, as amended in 1975. (See part V, chapter 21A.56 of this title.)

Condominium Unit: See definition of CondominiumCondominium Project And Condominium Unit.

"Construction period" means the time period between when the building permit is obtained and the certificate of occupancy is issued.

"Contractor's yard/office" means a use that provides construction businesses with a base of operations that can include office space and indoor/ outdoor storage of construction equipment or materials used by the construction business. This use excludes salvage or recycling operations.

"Conversion" means a proposed change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, from single ownership of said parcel,

such as an apartment house or multi-family dwelling, into that defined as a condominium project or other ownership arrangement involving separate ownership of individual units combined with joint collective ownership of common areas, facilities or elements. (See part V, chapter 21A.56 of this title.)

"Corner building" means a building, the structure of which rises above the ground within one hundred feet (100') of a block corner on the street face and one hundred feet (100') in depth.

Corner Lot: See definition of Lot, Corner.

Corner Side Yard: See definition of Yard, Corner Side.

"Dance studio" means a use engaged in the instruction of dance.

Daycare: Persons, associations, corporations, institutions or agencies providing on a regular basis care and supervision (regardless of educational emphasis) to children under fourteen (14) years of age, in lieu of care and supervision ordinarily provided by parents in their own homes, with or without charge, are engaged in providing child "daycare" for purposes of this title. Such providers and their facilities shall be classified as defined herein and shall be subject to the applicable provisions of title 5, chapters 9.08 through 9.20, 9.28 through 9.40, and 14.36 of this code, this title, and applicable state law.

Daycare Center, Adult: "Adult daycare center" means a nonmedical facility for the daytime care of adults who, due to advanced age, handicap or impairment, require assistance and/or supervision during the day by staff.

Daycare Center, Child: "Child daycare center" means an establishment providing care and maintenance to seven (7) or more children at any one time of any age separated from their parents or guardians.

Daycare, Nonregistered Home: "Nonregistered home daycare" means a person who uses his/her principal place of residence to provide daycare for no more than two (2) children.

Daycare, Registered Home Daycare Or Preschool: "Registered home daycare or preschool daycare" means the use of a principal place of residence to provide educational or daycare opportunities for children under age seven (7) in small groups. The group size at any given time shall not exceed eight (8), including the provider's own children under age seven (7).

"Decibel" means a logarithmic and dimensionless unit of measure of ten (10) used to describe the amplitude of sound. Decibel is denoted as "dB".

"Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into parcels by any person. The following activities or uses shall be taken for the purposes of these regulations to involve "development":

A. The construction of any principal building or structure;

B. Increase in the intensity of use of land, such as an increase in the number of dwelling units or an increase in nonresidential use intensity that requires additional parking;

C. Alteration of a shore or bank of a pond, river, stream, lake or other waterway;

D. Commencement of drilling (except to obtain soil samples), the driving of piles, or excavation on a parcel of land;

E. Demolition of a structure;

F. Clearing of land as an adjunct of construction, including clearing or removal of vegetation and including any significant disturbance of vegetation or soil manipulation; and

G. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

The following operations or uses shall not be taken for the purpose of these regulations to involve "development":

A. Work by a highway or road agency or railroad company for the maintenance of a road or railroad track, if the work is carried out on land within the boundaries of the right of way;

B. Utility installations as stated in subsection 21A.02.050B of this title;

C. Landscaping for residential uses; and

D. Work involving the maintenance of existing landscaped areas and existing rights of way such as setbacks and other planting areas.

"Development pattern": The development pattern standard applies to principal building height and wall height, attached garage placement and width, detached garage placement, height, wall height, and footprint size. A development pattern shall be established when three (3) or more existing structures are identified to establish the pattern, or in the case that three (3) structures constitutes more than fifty percent (50%) of the structures on the block face fifty percent (50%) of the structures shall establish a pattern.

Disabled: See definition of Persons with disabilities.

"Drive-through window" means a facility which accommodates patrons' automobiles and from which the occupants of the automobiles may make purchases or transact business.

"Dwelling" means a building or portion thereof, which is designated for residential purposes of a family for occupancy on a monthly basis and which is a self-contained unit with kitchen and bathroom facilities. The term "dwelling" excludes living space within hotels, bed and breakfast establishments, apartment hotels, boarding houses and lodging houses.

Dwelling, Manufactured Home: "Manufactured home dwelling" means a dwelling transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation. A manufactured home dwelling shall be connected to all utilities required for permanent dwellings and shall be certified under the national manufactured housing construction and safety standards act of 1974. A manufactured home dwelling is a type of manufactured home that is considered a single-family dwelling for the purposes of this title. (See definition of Mobile Home.) A modular home is a type of manufactured home that is a dwelling transported in one or more

sections that is fixed to a permanent site built foundation and connected to all utilities required for a permanent dwelling. The dwelling shall have a minimum roof pitch of three to twelve (3:12) and the nongable roof ends shall have a minimum overhang of twelve inches (12"). The dwelling shall also meet all uniform building code regulations and have a minimum width of twenty feet (20'). A "modular home dwelling" is a type of manufactured home that is considered a single-family dwelling for the purposes of this title.

Dwelling, Modular Home: See definition of Dwelling, Manufactured Home.

Dwelling, Multi-Family: "Multi-family dwelling" means a building containing three (3) or more dwellings on a single lot. For purposes of determining whether a lot is in multiple-family dwelling use, the following considerations shall apply:

A. Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under central ownership or management, or cooperative apartments, condominiums and the like.

B. Any multiple-family dwelling in which dwelling units are available for rental or lease for periods of less than one month shall be considered a hotel/ motel.

Dwelling, Single-Family: "Single-family dwelling" means a detached building containing only one dwelling unit surrounded by yards that is built on site or is a modular home dwelling that resembles site built dwellings. Mobile homes, travel trailers, housing mounted on self-propelled or drawn vehicles, tents, or other forms of temporary housing or portable housing are not included in this definition. All living areas of a single-family dwelling shall be accessible and occupied by the entire family.

Dwelling, Single-Family Attached: "Single-family attached dwelling" means a dwelling unit that is attached via a common party side wall to at least one other such dwelling and where at least three (3) such dwellings are connected together.

Dwelling, Single-Room Occupancy: "Single-room occupancy dwelling" means a residential dwelling facility containing individual, self-contained, dwelling units none of which may exceed five hundred (500) square feet in size.

Dwelling, Twin Home: "Twin home dwelling" means a building containing one dwelling separated from one other dwelling by a vertical party wall. Such a dwelling shall be located on its own individual lot.

Dwelling, Two-Family. "Two-family dwelling" means a detached building containing two (2) dwelling units on a single lot.

Dwelling Unit: See definition of Dwelling.

Electric Generation Facility, Public/Private: "Public/private electric generation facility" means an electric generating facility that uses natural gas, coal, solar energy, steam, wind or other means to produce electricity for exclusive delivery to the local or regional high voltage electric transmission grid.

"Electronic repair shop" means a use engaged in the consumer repair services of household electronic items and appliances.

"Elevation area" means the area or portion thereof (in square feet) of an architectural elevation of one side of a building.

Elevation Area, First Floor: "First floor elevation area" means the elevation area or portion thereof (in square feet) of the first or ground floor (story) of one side of a building.

"Emergency medical service facility" means a facility or licensed healthcare provider providing emergency medical or dental or similar examination, diagnosis, treatment and care on an outpatient basis only. An emergency medical service facility shall not provide twenty four (24) hour service unless it meets all zoning requirements applicable to hospitals.

"Equipment rental" means a type of use involving the rental of equipment, excluding heavy construction vehicles and equipment, in which all operations are contained within fully enclosed buildings.

Equipment Rental, Heavy: "Heavy equipment rental" means a type of use involving the rental of equipment, including heavy construction vehicles and equipment, in which all operations are not contained within fully enclosed buildings.

"Evergreen" means a plant having foliage that remains on the plant throughout the year.

"Excess dwelling units" means a number of residential dwelling units in a structure in excess of the number of dwelling units that have been approved either under applicable zoning codes or issued building permits.

"Existing/established subdivision" means any subdivision for which a plat has been approved by the city and recorded prior to the effective date hereof.

"Explosive manufacturing" means a use engaged in making explosive devices, but excluding explosive materials wholesale distributors.

"Extractive industry" means an establishment engaged in the on site extraction of surface or sub-surface mineral products or natural resources. Typical extractive industries are quarries, barrow pits, sand and gravel operations, oil and gas extraction, and mining operations.

"Family" means:

A. One or more persons related by blood, marriage, adoption, or legal guardianship, including foster children, living together as a single housekeeping unit in a dwelling unit; or

B. A group of not more than three (3) persons not related by blood, marriage, adoption, or legal guardianship living together as a single housekeeping unit in a dwelling unit; or

C. Two (2) unrelated persons and their children living together as a single housekeeping unit in a dwelling unit.

The term "family" shall not be construed to mean a club, group home, transitional victim home, substance abuse home, transitional home, a lodge or a fraternity/sorority house.

"Farmers' market" means an establishment for the sale of fresh produce and related food

items, which may have outdoor storage and sales. A farmers' market may provide space for one or more vendors.

"Fee schedule" means a schedule of fees in connection with applications for a zoning amendment, a special exception, a conditional use, a zoning certificate, a certificate of occupancy, sign certificate, or any other type of approval required by the provisions of this title which is established by the city council and revised from time to time upon recommendation by the zoning administrator. The fee schedule is available from the zoning administrator.

"Fence" means a structure erected to provide privacy or security which defines a private space and may enhance the design of individual sites. A wall or similar barrier shall be deemed a fence.

"Fence, opaque or solid" means an artificially constructed solid or opaque barrier that blocks the transmission of at least ninety five percent (95%) of light and visibility through the fence, and is erected to screen areas from public streets and abutting properties.

"Fence, open" means an artificially constructed barrier that blocks the transmission of a maximum of fifty percent (50%) of light and visibility through the fence, and is erected to separate private property from public rights of way and abutting properties.

"Financial institution" means a building, property or activity, the principal use or purpose of which is the provision of financial services, including, but not limited to, banks, facilities for automated teller machines (ATMs), credit unions, savings and loan institutions, stock brokerages and mortgage companies. "Financial institution" shall not include any use or other type of institution which is otherwise listed in the table of permitted and conditional uses for each category of zoning district or districts under this title.

"Fixed dimensional standards" means numerical maximum or minimum conditions which govern the development on a site.

"Flag lot" means a lot of irregular configuration in which an access strip (a strip of land of a width less than the required lot width) connects the main body of the lot to the street frontage. (See illustration in section 21A.62.050 of this chapter.)

"Flammable liquids or gases, heating fuel distribution" means a type of wholesale distributor engaged in supplying flammable liquids, gases and/or heating fuel. This use does not include the accessory storage of such substances on site.

Flea Market (Indoor): "Indoor flea market" means a building devoted to the indoor sales of new and used merchandise by independent vendors with individual stalls, tables, or other spaces.

Flea Market (Outdoor): "Outdoor flea market" means an outdoor area devoted to the periodic outdoor sales of new and used merchandise by independent vendors with individual stalls, tables, or other spaces.

Floor: See definition of Story (floor).

Floor Area, Gross: "Gross floor area" (for determining floor area ratio and size of establishment) means the sum of the gross horizontal area of all floors of the building

measured from the exterior face of the exterior walls or from the centerline of walls separating two (2) buildings. The floor area of a building shall include basement floor area, penthouses, attic space having headroom of seven feet (7') or more, interior balconies and mezzanines, enclosed porches, and floor area devoted to accessory uses. The floor area of covered accessory buildings, including parking structures, shall be included in the calculation of floor area ratio. Space devoted to open air off street parking or loading shall not be included in floor area.

The floor area of structures devoted to bulk storage of materials including, but not limited to, grain elevators and petroleum storage tanks, shall be determined on the basis of height in feet (i.e., 10 feet in height shall equal one floor).

"Floor area ratio" means the number obtained by dividing the gross floor area of a building or other structure by the area of the lot on which the building or structure is located. When more than one building or structure is located on a lot, the floor area ratio is determined by dividing the total floor area of all the buildings or structures by the area of the site.

Floor Area, Usable: "Usable floor area" (for determining off street parking and loading requirements) means the sum of the gross horizontal areas of all floors of the building, as measured from the outside of the exterior walls, devoted to the principal use, including accessory storage areas located within selling or working space such as counters, racks, or closets, and any floor area devoted to retailing activities, to the production or processing of goods or to business or professional offices.

Floor area for the purposes of measurement for off street parking spaces shall not include:

A. Floor area devoted primarily to mechanical equipment or unfinished storage areas;

B. Floor area devoted to off street parking or loading facilities, including aisles, ramps, and maneuvering space.

"Fraternity/sorority house" means a building which is occupied only by a group of university or college students who are associated together in a fraternity/sorority that is officially recognized by the university or college and who receive from the fraternity/sorority lodging and/or meals on the premises for compensation.

Front Yard: See definition of Yard, Front.

"Funeral home" means an establishment where the dead are prepared for burial or cremation and where wakes and funerals may be held.

"Garage" means a building, or portion thereof, used to store or keep a motor vehicle.

Garage, Attached: "Attached garage" means an accessory building which has a roof or wall of which fifty percent (50%) or more is attached and in common with a dwelling. Where the accessory building is attached to a dwelling in this manner, it shall be considered part of the dwelling and shall be subject to all yard requirements of the main building.

"Gas station" means a building and premises where gasoline must be sold, and where oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made:

A. Sale and servicing of spark plugs, batteries, and distributors and distributor parts;

B. Tire servicing and repair, but not recapping or regrooving;

C. Replacement or adjustment of mufflers and tailpipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like;

D. Radiator cleaning and flushing; provision of water, antifreeze and the like;

E. Greasing and lubrication;

F. Providing and repairing fuel pumps, oil pumps and lines;

G. Servicing and repair of carburetors;

H. Electrical repairs;

I. Adjusting and repairing brakes;

J. Minor motor adjustments not involving removal of the head or crankcase; and

K. Sale of beverages, packaged foods, tobacco, and similar convenience goods.

Uses permissible at a gas station do not include major mechanical and body work, straightening of frames or body parts, steam cleaning, painting, welding, storage of automobiles not in operating condition, or any activity involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in gas stations.

"General plan" means the comprehensive plan for Salt Lake City adopted by the city council.

"Government uses" means state or federal government operations providing services from specialized facilities, such as the highway department maintenance/construction, state police and federal bureau of investigation, etc. State or federal operations providing services from nonspecialized facilities shall be considered office uses.

Grade, Established: "Established grade" means the natural topographic grade of undisturbed areas on a site or the grade that exists after approved subdivision site development activity has been completed prior to approval for building permit construction activity.

Grade, Finished: "Finished grade" means the finished grade of a site after reconfiguring grades according to an approved regrading plan related to the initial building permit activity on a site.

Gross Floor Area: See definition of Floor Area, Gross.

"Groundcover" means any perennial evergreen plant material species that generally does not exceed twelve inches (12") in height and covers one hundred percent (100%) of the ground all year.

Group Home, Large: "Large group home" means a residential facility set up as a single housekeeping unit and shared by seven (7) or more unrelated persons, exclusive of staff, who require assistance and supervision. A large group home is licensed by the state of Utah and provides counseling, therapy and specialized treatment, along with habilitation or rehabilitation services for physically or mentally disabled persons. A large group home shall not include persons who are diagnosed with a substance abuse problem or who are staying in the home as a result of criminal offenses.

Group Home, Small: "Small group home" means a residential facility set up as a single housekeeping unit and shared by up to six (6) unrelated persons, exclusive of staff, who require assistance and supervision. A small group home is licensed by the state of Utah and provides counseling, therapy and specialized treatment, along with habilitation or rehabilitation services for physically or mentally disabled persons. A small group home shall not include persons who are diagnosed with a substance abuse problem or who are staying in the home as a result of criminal offenses.

"Guest" means any person hiring or occupying a room for living or sleeping purposes.

"Halfway home" means a facility, licensed or contracted by the state of Utah to provide for the supervision, counseling, training or treatment of residents to facilitate their transition from a correctional institutional environment to independent living.

"Hard surfaced" means a concrete, asphalt surface, brick, stone or turf block.

"Health and fitness facility" means a business or membership organization providing exercise facilities and/or nonmedical personal services to patrons, including, but not limited to, gymnasiums (except facilities owned by a governmental entity), private clubs (athletic, health, or recreational), reducing salons, tanning salons, and weight control establishments.

"Health hazard" means a classification of a chemical for which there is statistically significant evidence based on a generally accepted study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed persons. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes.

"Heliport" means a facility or structure that is intended or used for the landing and takeoff of rotary-wing aircraft, but not including the regular repair or maintenance of such aircraft or the sale of goods or materials to users of such aircraft.

"Historic buildings or sites" means those buildings or sites listed on the national register of historic places.

"Historic Landmark Commission" means the historic landmark commission of Salt Lake City, Utah. (See section 21A.06.050 of this title.)

Historic Site: See definition of Landmark site.

"Home occupation" means a business, profession, occupation, or trade conducted for gain or support and located and conducted within a dwelling unit, which use is accessory,

incidental and secondary to the use of the building for dwelling purposes and does not change the essential residential character of appearance of such building and subject to the regulations set forth in section 21A.36.030 of this title.

"Homeless shelter" means a building or portion thereof in which sleeping accommodations are provided on an emergency basis for the temporarily homeless.

"Hospital" means an institution licensed by the state of Utah specializing in giving clinical, temporary, or emergency services of a medical or surgical nature to human patients.

"Hotel/motel room" means a room or combination of rooms (suite) offered as a single unit for lodging on a daily or weekly basis.

"House museum" means a dwelling unit which is converted from its original principal use as a dwelling unit to a staffed institution dedicated to educational, aesthetic or historic purposes. Such museum should include a staff who commands an appropriate body of special knowledge necessary to convey the historical, aesthetic or architectural attributes of the building and its collections to the general public. Such staff should also have the ability to reach museological decisions consonant with the experience of his or her peers and have access to and acquaintance with the literature of the field. Such museum should maintain either regular hours or be available for appointed visits such that access is reasonably convenient to the public.

"Impact statement" means a statement containing an analysis of a project's potential impact on the environment, traffic, aesthetics, schools, and/or municipal costs and revenues, as well as comments on how the development fits into the general plan of Salt Lake City.

Incinerator, Medical Waste/Hazardous Waste: "Medical waste/hazardous waste incinerator" means a device using heat, for the reduction of medical/ hazardous waste materials, as defined by the state of Utah division of solid and hazardous waste.

"Industrial assembly use" means an industrial use engaged in the fabrication of finished or partially finished products from component parts produced off-site. Assembly use shall not entail metal stamping, food processing, chemical processing or painting other than painting that is accessory to the assembly use.

"Infill" means new development that occurs within an already developed area where building patterns and lot platting are already established.

"Institution" means an organization or establishment providing religious, educational, charitable, medical, cultural or governmental services.

Interior Side Yard: See definition of Yard, Interior Side.

"Intermodal transit passenger hub" means a publicly owned and operated central transit passenger transfer facility servicing rail, bus, shuttle, limousine, taxis, bicyclists and pedestrians and may include, but is not limited to, the following complementary land uses such as offices, restaurants, retail sales and services, bus line terminals, bus line yards and repair facilities, limousine service and taxicab facilities.

"Interpretation" means an administrative decision regarding the general provisions of this title to specific cases. Interpretations shall not include administrative decisions that will

effect a permitted use, conditional use or nonconforming use.

Interpretation, Use: "Use interpretation" means an administrative decision of this title related to specific cases which affect permitted use or conditional use provisions within a specific district and affect nonconforming uses.

"Jail" means a place for lawful confinement of persons. For the purpose of this title, a jail shall not include halfway homes and mental hospitals.

"Jewelry fabrication" means the production of jewelry from component materials, diamond cutting and related activities.

"Kennel, public or private" means the keeping of more than two (2) dogs and/or two (2) cats that are more than six (6) months old. A third dog or cat may be allowed if a pet rescue permit has been approved under section 8.04.130 of this code.

Laboratory, Medical, Dental, Optical: "Medical, dental and optical laboratory" means a laboratory processing on- or off-site orders limited to medical testing and precision fabrication of dental/optical articles worn by patients.

"Land use" means the conduct of an activity, or the performance of a function or operation, on a site or in a building or facility for the purpose for which the land or building is occupied, or maintained, arranged, designed or intended.

Land Use Type (Similar Land Use Type): "Land use types" shall be considered to be similar land use types if both uses are allowed in the same zoning district or in the same or more restrictive zoning district within the commercial zoning category or in the same or more restrictive district within the manufacturing zoning category and the change from one land use type to another similar land use type does not increase the parking requirement. If the proposed land use type is a conditional use it will be subject to the conditional use process.

"Landfill" means a municipal, commercial or construction debris disposal facility where solid waste is placed in or on the land and which is not a land treatment facility. The term "landfill" does not include facilities where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

Landfill, Commercial: "Commercial landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. A commercial landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

Landfill, Construction Debris: "Construction debris landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste or dead animals, but excluding inert demolition waste used as fill material.

Landfill, End Use Plan: "End use plan landfill" means a plan showing how the site will be reused/ reclaimed upon completion of landfill activities to allow for the productive and compatible reuse of the site.

Landfill, Municipal: "Municipal landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government.

"Landmark site" means a building or site of historic importance designated by the city council.

"Landscape area" means that portion of a lot devoted exclusively to landscaping, except that streets, drives and sidewalks may be located within such area to provide reasonable access.

"Landscape buffer" means an area of natural or planted vegetation adjoining or surrounding a land use and unoccupied in its entirety by any building, structure, paving or portion of such land use, for the purposes of screening and softening the effects of the land use.

"Landscape plan" means the plan for landscaping required pursuant to part IV, chapter 21A.48 of this title.

"Landscape yard" means that portion of a lot required to be maintained in landscape area.

"Landscaping" means the improvement of a lot, parcel or tract of land with grass, shrubs and trees. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary, and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

"Lattice tower" means a self-supporting multiple sided, open steel frame structure used to support telecommunications equipment.

"Legal conforming" means a status conferred by a provision of this title which shall be limited to the regulation(s) contained within that provision. Legal conforming status allows the reconstruction of a destroyed use/structure to its level of use intensity and building bulk before destruction.

"Limousine service" means a use that provides personal vehicular transportation for a fee, and operating by appointment only.

"Lodging house" means a residential structure that provides lodging with or without meals, is available for monthly occupancy only, and which makes no provision for cooking in any of the rooms occupied by paying guests.

"Lot" means a piece of land identified on a plat of record or in a deed of record of Salt Lake County and of sufficient area and dimensions to meet district requirements for width, area, use and coverage, and to provide such yards and open space as are required and has been approved as a lot through the subdivision process. A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded; except that no division or combination of any residual lot, portion of lot, or parcel shall be created which does not meet the requirements of this title and the subdivision regulations of the city.

"Lot area" means the total area within the property lines of the lot plus one-half (1/2) the right of way area of an adjacent public alley.

Lot Area, Net: "Net lot area" means the area within the property lines of a lot, excluding any right of way area of an adjacent public alley.

"Lot assemblage" means acquisition of two (2) or more contiguous lots by the same owner(s) that may or may not be consolidated into a single parcel.

Lot, Corner: "Corner lot" means a lot which has two (2) adjacent sides abutting on public streets, serving more than two (2) lots, provided the interior angle at the intersection of such two (2) sides is less than one hundred thirty five degrees (135o).

"Lot depth" means the mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

Lot, Flag: See definition of Flag Lot.

Lot, Interior: "Interior lot" means a lot other than a corner lot.

Lot Line, Corner Side: "Corner side lot line" means any lot line between the front and rear lot lines which abuts a public street.

Lot Line, Front: "Front lot line" means that boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way. On corner lots, the property owner shall declare the front lot line and corner side yard line on a building permit application. In the case of landlocked land, the front lot line shall be the lot line that faces the access to the lot.

Lot Line, Interior Side: "Interior side lot line" means any lot line between the front and rear lot lines which does not abut a public street.

Lot Line, Rear: "Rear lot line" means that boundary of a lot which is most distant from, and is, or is most nearly, parallel to, the front lot line.

Lot, Nonconforming: "Nonconforming lot" means a lot which lawfully existed prior to the effective date hereof, or any amendment thereto, but which fails to conform to the lot regulations of the zoning district in which it is located.

"Lot width" means the horizontal distance between the side lot lines measured at the required front yard setback.

"Lower power radio services facility or wireless telecommunications facility" means an unmanned structure which consists of equipment used primarily for the transmission, reception or transfer of voice or data through radio wave or (wireless) transmissions. Such sites typically require the construction of transmission support structures to which antenna equipment is attached. Low power radio services facilities include "cellular" or "PCS" (personal communications system) communications and paging systems.

"Major streets" means those streets identified as major streets on city map 19372.

Manufactured Home: See definition of Dwelling, Manufactured Home.

Manufacturing, Heavy: "Heavy manufacturing" means the assembly, fabrication, or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of adjacent property in terms of noise, smoke, fumes, odors, glare, or health and safety hazards, or that otherwise do not constitute "light manufacturing". Heavy manufacturing generally includes processing and fabrication of large or bulky products, products made from extracted or raw materials, or products involving flammable or explosive materials and processes which require extensive floor areas or land areas for the

fabrication and/or incidental storage of the products. The term "heavy manufacturing" shall include uses such as refineries and chemical manufacturing. The term "heavy manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.

Manufacturing, Light: "Light manufacturing" means the assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place or where such processes are housed entirely within a building. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas. The term "light manufacturing" shall include uses such as electronic equipment production and printing plants. The term "light manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.

"Master plan" means a portion of the long range general plan for Salt Lake City as adopted by the city council.

"Medical/dental office or clinic" means a facility dedicated exclusively to providing medical, dental or similar examination, diagnosis, treatment, care and related healthcare services by licensed healthcare providers and other healthcare professionals practicing medicine as a group on persons on an outpatient basis. No portion of the facility may be used to provide on site inpatient care, overnight care, or twenty four (24) hour operations, unless it is in compliance with all ordinances applicable to hospitals. Laboratory facilities shall be accessory only and shall be utilized for on site care.

"Medical nursing school" means a professional school with facilities for teaching and training individuals for the nursing profession and that awards a degree for individuals who complete the nursing curriculum.

"Microbrewery" means a brewpub which, in addition to retail sale and consumption on site, markets beer wholesale in an amount not to exceed sixty thousand (60,000) barrels (31 gallons) per year. Revenue from food sales must constitute at least fifty percent (50%) of the total business revenues, excluding wholesale and retail carryout sales of beer. (See sections 6.08.081 through 6.08.089 of this code.)

"Mid block area" means an area of development not deemed to be a block corner.

"Miniwarehouse" means a retail service establishment providing off site storage space to residents and businesses, offering convenience storage and limited warehousing services primarily for personal effects and household goods within enclosed structures having individual access, but excluding use as workshops, hobby shops, manufacturing or commercial activity.

"Mobile home" means a transportable, factory built home, designed as a year round residential dwelling and built prior to June 15, 1976, the effective date of the national manufactured housing construction and safety standards act of 1974. The following are not included in the mobile home definition:

A. Travel trailers, motor homes, camping trailers, or other recreational vehicles.

B. Manufactured and modular housing designed to be set on a permanent foundation.

"Motel/hotel" means a building or buildings in which lodging units are offered for persons, for compensation by the day or the week.

"Municipal services" means city or county government operations and governmental authorities providing services from specialized facilities, such as police service, street/highway department maintenance/construction, fire protection, sewer and water services, etc. City or county operations and governmental authorities providing services from nonspecialized facilities shall be considered office uses.

"Museum" means an institution for the acquisition, preservation, study and exhibition of works of artistic, historical or scientific value and for which any sales relating to such exhibits are incidental and accessory to the exhibits presented.

"New construction" means on site erection, fabrication or installation of any building, structure, facility or addition thereto.

"Noncomplying structure" means buildings and structures that serve complying land uses which were legally established on the effective date of any amendment to this title that makes the structure not comply with the applicable yard area, height and/or bulk regulations of this title.

"Nonconforming lot" means a parcel of land which was legally established on the effective date of any amendment to this title that made the lot noncomplying that has less lot area, frontage or dimensions than required in the district in which it is located.

"Nonconforming use" means any building or land legally occupied by a use at the time of passage of the ordinance codified in this title or amendment thereto which does not conform after passage of said ordinance or amendment thereto with the use regulations of the district in which located.

"Nonconformity" means the presence of any nonconforming use or noncomplying structure.

"Nursing care facility" means a healthcare facility, other than a hospital, constructed, licensed and operated to provide patient living accommodations, twenty four (24) hour staff availability, and at least two (2) of the following patient services: a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological or other professional therapies to intermittent health related or paraprofessional personal care services; b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or c) a supervised living environment that provides support, training or assistance with individual activities of daily living.

"Obstruction" means a structure or appurtenance to a building that is located or projects into a required yard. Allowed obstructions are listed in section 21A.36.020 of this title.

"Off site" means a lot that is separate from the principal use.

"Off street parking" means parking provided on private or public property, excluding public rights of way.

"Office use" means a type of business use, which may or may not offer services to the public, that is engaged in the processing, manipulation or application of business information or professional expertise. An office use is not materially involved in fabricating, assembling or warehousing of physical products for the retail or wholesale market, nor is an office engaged in the repair of products or retail services. Examples of professional offices include accounting, investment services, architecture, engineering, legal services and real estate services. Unless otherwise specified, office use shall include doctors' and dentists' offices. Office use shall not include any use or other type of establishment which is otherwise specifically listed in the table of permitted and conditional uses for the applicable zoning districts.

"Open space" means any area of a lot which is completely free and unobstructed from any structure or parking areas. Landscaping, walkways, uncovered patio areas, light poles and other ornamental features shall not be considered as obstructions for purposes of this definition. Driveways that provide access to parking lots shall not be considered as an obstruction subject to the driveways not exceeding twenty percent (20%) of any required yard area that they provide access through.

"Outdoor sales and display" means the use of open areas of the lot for sales or display of finished products for sale to the consuming public. Outdoor sales and display shall include accessory sales/ display areas, such as auto accessory items at a gas station, as well as principal sales/display areas, such as the sales yard of garden center. Outdoor sales and display shall not include items sold in bulk quantities (e.g., sand, gravel, lumber), merchandise inventory not intended for immediate sale, or items not typically sold to the consuming public (e.g., pallets, construction equipment and supplies, industrial products).

"Outdoor storage" means the use of open areas of the lot for the storage of items used for nonretail or industrial trade, the storage of merchandise inventory, and the storage of bulk materials such as sand, gravel, and other building materials. Outdoor storage shall also include contractors' yards and salvage or recycling areas.

"Outdoor storage, public" means the use of open areas of the lot for the storage of private personal property including recreational vehicles, automobiles and other personal equipment. This use category does not include or allow the storage of junk as defined in section 21A.40.140 of this title.

"Outdoor television monitor" means an outdoor large screen television monitor that displays material generated and/or produced by an on site television station. The material displayed shall be the television station's primary broadcast feed or rebroadcast news, sports and/or public affairs broadcasts, and shall not be in conflict with the federal communication commission's (FCC) community standards that apply to broadcasts from the television station between the hours of six o'clock (6:00) A.M. and twelve o'clock (12:00) midnight (regardless of the time of day that such material is displayed on the outdoor television monitor). The material displayed must be the television station's primary broadcast feed or rebroadcast news, sports and/or public affairs broadcasts to the general public (except between the hours of 12:00 midnight and 6:00 A.M. where daytime programming, consistent with community standards, may be substituted). Outdoor television monitors may not be illuminated to a brightness that causes undue glare or interference with adjacent properties. Sound emanating from the outdoor television monitor may not exceed Salt Lake City or County health standards.

"Overlay district" means a zoning district pertaining to particular geographic features or land uses imposing supplemental requirements and standards in addition to those provided in the base or underlying zoning district. Boundaries of overlay districts are shown on the zoning map or on special maps referenced in the text.

"Parcel" means a continuous area of real property, or lot, which is legally described and accurately drawn on the plat of such property and recorded with Salt Lake County. See definition of Lot.

"Park and ride lot" means the use of a lot for parking as an adjunct to mass transit.

Park, Public: "Public park" means a park, playground, swimming pool, golf course or athletic field within the city which is under operation or management of the city's park department.

"Park strip" means the landscape area within a public way located between the back of street curb and the sidewalk, or in the absence of a sidewalk, the right of way line.

"Park strip landscaping" means the improvement of property within the street right of way situated between the back of curb and the sidewalk or, if there is no sidewalk, the back of curb and the right of way line, through the addition of plants and other organic and inorganic materials harmoniously combined to produce an effect appropriate for adjacent uses and compatible with the neighborhood. Park strip landscaping includes trees and may also include a combination of lawn, other perennial groundcover, flowering annuals and perennials, specimen shrubs, and inorganic material.

Parking Facility, Shared: "Shared parking facility" means a parking lot or garage used for shared parking by two (2) or more businesses or uses.

Parking Garage, Commercial: "Commercial parking garage" means a structure used for parking or storage of automobiles, generally available to the public, and involving payment of a charge for such parking or storage. A garage used solely in conjunction with multiple-family housing or a hotel shall not be construed to be a commercial garage, but rather a permitted accessory structure and use, even though not on the same premises as the multiple-family housing or motel/hotel.

Parking, Intensified Reuse: "Intensified reuse parking" means the change of the use of a building or structure, the past or present use of which may or may not be legally nonconforming as to parking, to a use which would require a greater number of parking stalls available on site which would otherwise be required pursuant to table 21A.44.060F of this title. Intensified parking reuse shall not include residential uses in residential zoning districts other than single room occupancy residential uses and unique residential populations.

Parking, LeasedAlternative Parking: "Leased parkingalternative parking" means the lease, for a period of not less than five (5) years, of parking spaces not required for any other use and located within five hundred feet (500') measured between a public entrance to the alternative parking property place of pedestrian egress from the leased parking along the shortest public pedestrian or vehicle way, except that in the downtown D-1 district the distance to the leased parking may be up to one thousand two hundred feet (1,200') measured between a public entrance to the alternative parking property and a place of pedestrian egress from the leased parking along the shortest public pedestrian or vehicle

way.

"Parking lot" means a paved, open area on a lot used for the parking of more than four (4) automobiles whether free, for compensation, or as an accommodation for clients and customers.

Parking, Off Site: "Off site parking" means the use of a lot for required parking that is separate from the lot of the principal use.

Parking, Off SiteAlternative Parking: "Off site parkingalternative parking" means parking under the same ownership as the alternative parking property located within five hundred feet (500') of the alternative parking property, or within the one thousand two hundred feet (1,200') in a downtown D-1 district, measured between a public entrance to the alternative parking property and a place of pedestrian egress from the off site parking along the shortest public pedestrian or vehicle way, and which parking is not required or dedicated for another use.

Parking, Shared: "Shared parking" means off street parking facilities on one lot shared by multiple uses because the total demand for parking spaces is reduced due to the differences in parking demand for each use during specific periods of the day.

"Parking space" means space within a parking area of certain dimensions as defined in part IV, chapter 21A.44 of this title, exclusive of access drives, aisles, ramps, columns, for the storage of one passenger automobile or commercial vehicle under two (2) ton capacity.

Parking StudyAlternative Parking: "Parking studyalternative parking" means a study prepared by a licensed professional traffic engineer specifically addressing the parking demand generated by a use for which an alternative parking requirement is sought and which provides the city information necessary to determine whether the requested alternative parking requirement will have a material negative impact to adjacent or neighboring properties and be in the best interests of the city.

"Patio" means a paved surface on an earthen/ stone base that is not more than two feet (2') above established grade, designed for pedestrian use.

"Pawnshop" means a commercial establishment which lends money at interest in exchange for valuable personal property left with it as security.

"Pedestrian connection" means a right of way intended for pedestrian movement/activity, including, but not limited to, sidewalks, internal walkways, external and internal arcades, and plazas.

"Perennial" means a plant having a life span more than two (2) years.

"Performance standards" means standards which establish certain criteria which must be met on a site, but allow flexibility as to how those criteria can be met.

"Performing arts production facility" means a mixed use facility housing the elements needed to support a performing arts organization. Such facility should include space for the design and construction of stage components; costume and prop design and construction, administrative support, rehearsal space, storage space, and other functions associated either with an on site or off site live performance theater.

"Person" means a firm, association, authority, organization, partnership, company or corporation as well as an individual.

"Persons with disabilities" means the city adopts the definition of "disabled" from the Americans with disabilities act, the rehabilitation act, title 8 of the civil rights act and all other applicable federal and state laws.

"Pet cemetery" means a place designated for the burial of a dead animal where burial rights are sold.

"Philanthropic use" means an office or meeting hall used exclusively by a nonprofit public service organization.

"Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.

"Planned development" means a lot or contiguous lots of a size sufficient to create its own character where there are multiple principal buildings on a single lot, where not otherwise authorized by this title, or where not all of the principal buildings have frontage on a public street. A planned development is controlled by a single landowner or by a group of landowners in common agreement as to control, to be developed as a single entity, the character of which is compatible with adjacent parcels and the intent of the zoning district or districts in which it is located.

"Planning commission" means the planning commission of Salt Lake City, Utah.

"Planning official" means the director of the planning division of the department of community development, or his/her designee.

"Planting season" means that period during which a particular species of vegetation may be planted for maximum survivability and healthy growth.

"Plaza" means an open area which is available to the public for walking, seating and eating.

"Precision instrument repair shop" means a shop that provides repair services for industrial, commercial, research, and similar establishments. Precision instrument repair does not include consumer repair services for individuals and households for items such as watches or jewelry, household appliances, musical instruments, cameras, and household electronic equipment.

Prepared Food, Take Out: "Take out prepared food" means a retail sales establishment which prepares food for consumption off site only.

"Printing plant" means a commercial establishment which contracts with persons for the printing and binding of written works. The term "printing plant" shall not include a publishing company or a retail copy or reproduction shop.

"Private recreational facility" means a golf course, swimming pool, tennis club or other recreational facility under private control, operation or management which functions as the principal use of the property.

"Public/private utility buildings and structures" means buildings or structures used in

conjunction with the provision of public or private utilities.

Public Transportation, Employer Sponsored: "Employer sponsored public transportation" means a program offering free or substantially discounted passes on the Utah transit authority to employees.

"Publishing company" means a company whose business is the editing and publishing of works of authors. The term "publishing company" shall not include a printing plant, unless it is only accessory to the publishing business.

"Railroad freight terminal facility" means a major railroad track yard area for primary use by railroad employees for regional scale interstate mainline oriented intermodal freight transfers of: a) multimodal (sea, rail, truck transport) self-contained cargo containers from train to train, train to semitruck trailer, and semitruck trailer to train loading; and b) for new motor vehicle train transports to semitruck trailer transports for regional distribution purposes. No breakdown of self-contained cargo containers occurs at intermodal railroad freight terminal facilities.

Rear Yard: See definition of Yard, Rear.

"Reception center" means a facility which leases the premises for hosting weddings and other private events. The term "reception center" shall not include uses whose primary function is a restaurant or banquet hall.

"Record of survey map" means the map as defined in section 57-8-3(18), Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Recreation vehicle park" means a business that provides space for living in a recreational vehicle, (camper, travel trailer or motor home), on a daily or weekly basis. A recreational vehicle park may include accessory uses such as a convenience store, gasoline pumps and recreation amenities, such as swimming pools, tennis courts, etc., for the convenience of persons living in the park.

"Recycling collection station" means a use, often accessory in nature, providing designated containers for the collection, sorting and temporary storage of recoverable resources (such as paper, glass, metal and plastic products) until they are transported to separate processing facilities.

"Recycling container" means an enclosed or semienclosed container used for the temporary storage of recyclable materials until such materials can be efficiently collected and processed.

"Recycling processing center" means a facility to temporarily store, sort, recycle, process, compost or treat materials (such as paper, glass, metal and plastic products) to return them to a condition in which they can be reused for production or transported to another approved site for permanent storage, landfilling or further processing. Recycling processing center does not include automobile salvage and recycling.

"Relocatable office building" means a portable structure built temporarily on a chassis or skids, and designed to be used with or without a permanent foundation for use or occupancy for any commercial or industrial purpose when connected to water, power or

utility hookups. (See subsection 21A.42.070I of this title.)

"Resident healthcare facility" means a facility licensed by the state of Utah which provides protected living arrangements for two (2) or more persons who because of minor disabilities cannot, or choose not to, remain alone in their own home. The facility may serve the elderly, persons with minor mental or physical disabilities, or any other persons who are ambulatory or mobile and do not require continuous nursing care or services provided by another category of licensed health facility. The resident healthcare facility shall be considered the resident's principal place of residence.

"Residential districts" means those districts listed in subsection 21A.22.010A of this title.

Residential Structure: The term "residential structure" for the purposes of the RB zoning district means a structure that has maintained the original residential exterior without significant structural modifications. (False facades are not considered a significant structural modification.)

Residential Substance Abuse Treatment Home, Large: "Large residential substance abuse treatment home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and may include a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. A large residential substance abuse treatment home provides supervision, counseling and therapy through a temporary living arrangement and provides specialized treatment, habilitation or rehabilitation services for persons with alcohol, narcotic drug or chemical dependencies.

Residential Substance Abuse Treatment Home, Small: "Small residential substance abuse treatment home" means a residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and may include a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. A small residential substance abuse treatment home provides supervision, counseling and therapy through a temporary living arrangement and provides specialized treatment, habilitation or rehabilitation services for persons with alcohol, narcotic drug or chemical dependencies.

"Restaurant" means a building within which there is served a variety of hot food for consumption on the premises and where more than sixty percent (60%) of the gross volume is derived from the sale of foods served for consumption on the premises.

"Retail goods establishment" means a building, property or activity, the principal use or purpose of which is the sale of physical goods, products or merchandise directly to the consumer. Retail goods establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for the category of zoning district or districts.

"Retail services establishment" means a building, property or activity, the principal use or purpose of which is the provision of personal services directly to the consumer. The term "retail services establishment" shall include, but shall not be limited to, barbershops, beauty parlors, laundry and dry cleaning establishments (plant off premises), tailoring shops, shoe

repair shops and the like. Retail services establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

"Retaining wall" means a wall designed to resist the lateral displacement of soil or other materials.

"Reverse vending machine" means a machine designed to pay cash to customers in exchange for the deposit of used beverage cans and/or bottles for recycling.

"Rooming house" means a building or group of attached or detached buildings containing in combination at least three (3) lodging units for occupancy on at least a monthly basis, with or without board, as distinguished from hotels and motels in which rentals are generally for daily or weekly periods and occupancy is by transients.

"Sanitarium" means a health facility or institution for the inpatient treatment and recuperation of persons suffering from physical or mental disorders, providing qualified medical, professional and nursing staff. A sanitarium shall not include facilities for the criminally insane.

Schools, Professional And Vocational: "Professional and vocational school" means schools offering occupational and vocational training, the courses of which are not generally transferable toward a bachelor's degree.

Schools, Public Or Private: "Public or private school" means an institution of learning or instruction primarily catering to minors, whether public or private, which is licensed at such facility by either the city or the state of Utah. The definition includes nursery schools, kindergarten, elementary schools, junior high schools, middle high schools, senior high schools or any special institution of learning under the jurisdiction of the state department of education, but not including professional and vocational schools, charm schools, dancing schools, music schools or similar limited schools nor public or private universities or colleges.

"Seasonal item sales" means items that are identified with individual holidays or celebrations relating to the four (4) seasons: spring, summer, autumn or winter (such as a winter festival or harvest festival). Such items include, but are not limited to, Valentine's Day or Easter items, Halloween pumpkin, or Christmas tree sales. Independence Day and Pioneer Day fireworks are governed independently in this code. Prepared food is not a seasonal item, however fresh farm produce, sold within the intermountain region harvest season, is allowed. Food pertaining to farmers' markets and farm sales are regulated separately.

Setback: See definition of Yard.

"Sewage treatment plant" means a licensed facility that purifies sanitary sewer effluent to a minimum level as established by state and/or federal environmental protection agencies.

"Sexually oriented business" means any business for which a sexually oriented business license is required as an adult business, nude entertainment business, or as a seminude dancing bar, pursuant to the sexually oriented business licensing requirements in chapter

5.61 of this code. (See section 21A.36.140 of this title.)

"Shopping center" means a concentration of related commercial establishments with one or more major anchor tenants, shared parking, and unified architectural and site design. A shopping center normally has single or coordinated ownership/ operations/management control and may include pad site as well as architecturally connected units.

"Shopping center pad site" means a separate parcel of land designated in the shopping center plan as a building site. The pad site may not be owned by the shopping center owner.

Side Yard: See definition of Yard, Side.

"Sight distance triangle" means a triangular area formed by a diagonal line connecting two (2) points located on intersecting right of way lines (or a right of way line and the edge of a driveway). For both residential driveways and nonresidential driveways, the points shall be determined through the site plan review process by the development review team. The purpose of the sight distance triangle is to define an area in which vision obstructions are prohibited. (See illustration in section 21A.62.050 of this chapter.)

Single-Family Dwelling: See definition of Dwelling, Single-Family.

"Site development permit" means a permit for earth work or site preparation required pursuant to chapter 18.28 of this code.

"Site plan" means an accurately scaled plan that illustrates the existing conditions on a land parcel and the details of a proposed development.

"Sketch plan review" means a preliminary review process administered by the development review administrator or designee for the purpose of determining the required standard for front or corner side yard; building height and wall height, width and placement of attached garages; and the location, building height and footprint of accessory structures prior to the formal submittal of plans to obtain a building permit.

"Sludge" means any solid, semisolid or liquid waste, including grit and screenings generated from a municipal, commercial or industrial wastewater treatment plant or water supply treatment plant or air pollution control facility or any other such use having similar characteristics.

"Snow cone and shaved ice hut" means a temporary building designed to accommodate the sales of flavored ice only.

"Social service mission" means an establishment that provides social services other than on site housing facilities.

"Solid waste transfer station" means a facility used to combine and compact loads of solid waste into larger units of waste, which are then loaded onto trucks for delivery to landfill sites.

"Special purpose districts" means zoning districts which require regulations that address special types of land uses, such as the airport or institutional uses.

"Spot zoning" means the process of singling out a small parcel of land for a use classification materially different and inconsistent with the surrounding area and the adopted city master plan, for the sole benefit of the owner of that property and to the detriment of the rights of other property owners.

"Stable, private" means a detached building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale.

"Stable, public" means a building or land where animals are kept for remuneration, hire, sale, boarding, riding or show.

"Store, conventional department" means a retail business which offers a broad range of merchandise lines at moderate level price points, consisting of primarily apparel and home goods. No merchandise line predominates and goods are displayed in a departmentalized format. Customer assistance is provided in each department, but checkout facilities can be either departmentalized or centralized. These stores are typically over one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, Kohls, J.C. Penney and Mervyn's, as such stores are typically configured as of January 13, 2004.

"Store, fashion oriented department" means a retail business which offers more specialized lines of merchandise than conventional department stores, with an emphasis on apparel merchandise. The merchandise is displayed in separate departments, with over forty percent (40%) of sales area devoted to the sale of apparel, shoes, cosmetics and accessories related to personal care and appearance. Fashion oriented department stores sell goods which are primarily nationally advertised brands, they may sell appliances which are usually serviced by other companies, and often offer limited lines of merchandise through seasonal or special catalogs. These stores provide checkout service and customer assistance (salespersons) within each department. These stores are typically over one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, Meier & Frank, Bloomingdales, Macy's, Dillards, Marshall Fields, Bon Marche, Broadway, Broadway Southwest, Robinsons/May, as such stores are typically configured as of January 13, 2004.

"Store, mass merchandising" means a retail business selling a variety of merchandise, including apparel and home goods, at generally lower price points. Mass merchandising stores have fast turnover and high volume retailing with centralized checkout stations. Generally, shopping carts are available to customers and there is reduced customer assistance within each department but customer assistance may occur in departments for special promotions or where appropriate for product demonstration, legal compliance or security purposes. These stores typically exceed eighty thousand (80,000) square feet in size. Examples include, but are not limited to, Wal-Mart, K-Mart, Target, Fred Meyer and ShopKo, as such stores are typically configured as of January 13, 2004.

"Store, specialty" means a retail business specializing in a broad range of a single category of goods at competitive prices. The categories usually included are home improvement, consumer music and electronics, office supply, auto aftermarket, computers, toys, books, home/bed/bath, pet supply, craft/ hobby, or sporting goods. They often have departments, centralized and/or exit checkout stations and operate in various physical formats. These stores typically range from twenty thousand (20,000) to one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, The Home Depot, OfficeMax, Toys 'R' Us, PetsMart, Michaels, Bed, Bath & Beyond, Borders Books, Barnes & Noble,

Circuit City, Galyan's, Sports Authority, Pep Boys, and CompUSA, as such stores are typically configured as of January 13, 2004.

"Store, specialty fashion department" means a retail business which specializes in high end merchandise in the categories of apparel, fashion accessories, jewelry, and limited items for the home and housewares. These stores feature exclusive offerings of merchandise, high levels of customer service and amenities, and higher price points. Specialty fashion department stores provide checkout service and customer assistance (salespersons) within each department and often offer specialized customer services such as valet parking, exclusive dressing rooms and personal shoppers. These stores typically range from eighty thousand (80,000) to one hundred thirty thousand (130,000) square feet in size. Examples include, but are not limited to, Lord & Taylor, Neiman Marcus, Nordstrom, Saks Fifth Avenue, as such stores are typically configured as of January 13, 2004.

"Store, superstore and hypermarket" means a retail business primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture, and appliances, sold at discount prices. They have centralized exit checkout stations, and utilize shopping carts for customers. These stores typically range from one hundred twenty thousand (120,000) to one hundred eighty thousand (180,000) square feet in size. Examples include, but are not limited to, Wal-Mart Supercenter, Meijer's, Fred Meyer (with grocery) and Super Target, as such stores are typically configured as of January 13, 2004.

"Store, warehouse club" means a retail business requiring patron membership, and selling packaged and bulk foods and general merchandise. They are characterized by high volume and a restricted line of popular merchandise in a no frills environment. They have centralized exit checkout stations, and utilize shopping carts for customers. These stores typically range from one hundred twenty thousand (120,000) to one hundred fifty thousand (150,000) square feet in size. Examples include, but are not limited to, BJ's Wholesale Club, Costco, and Sam's Club, as such stores are typically configured as of January 13, 2004.

"Story (floor)" means the vertical distance between the finished floor of one level and the finished floor of the level above or below.

Story, Half: "Half story" means the portion of a building which contains habitable living space within the roof structure of a shed, hip or gable roof. The portion of a building which contains habitable living space within the roof structure of a mansard, gambrel or flat roof constitutes one full story, not one-half (1/2) story.

"Street" means a vehicularway which may also serve for all or part of its width as a way for pedestrian traffic, whether called street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, alley, mall or otherwise designated.

"Street frontage" means all of the property fronting on one side of the street between intersecting streets, or between a street and a waterway, a dead end street, or a political subdivision boundary, and having unrestricted vehicular and pedestrian access to the street. For the purpose of regulating signs or flags, "street frontage" means an entire lot fronting on a portion of the street.

"Street trees" means trees located in the landscape area within a public way located between the back of the street curb and the sidewalk, or in absence of the sidewalk, the

right of way line.

"Structural alteration" means any change in the supporting members of a structure, such as foundations, bearing walls or bearing partitions, columns, beams or girder, or any substantial change in the roof.

"Structure" means anything constructed or erected with a fixed location on the ground or in/over the water bodies in the city. Structure includes, but is not limited to, buildings, fences, walls, signs, and piers and docks, along with any objects permanently attached to the structure.

Structure, Accessory: See definition of Accessory building or structure.

"Subdivision" means any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

TV Antenna: See definition of Antenna, TV.

"Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that includes beer bars, parlors, lounges, cabarets and nightclubs.

"Temporary use" means a use intended for limited duration as defined for each type of temporary use in part IV, chapter 21A.42 of this title.

"Testing laboratory" means a use engaged in determining the physical qualities of construction, medical or manufactured materials. This use does not include research laboratories engaged in scientific experimentation.

Transitional Treatment Home, Large: "Large transitional treatment home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. Such programs provide supervision, counseling and therapy through a temporary living arrangement and provide specialized treatment, habilitation or rehabilitation services for persons with emotional, psychological, developmental, behavioral dysfunctions or impairments. A large transitional treatment home shall not include any persons referred by the Utah state department of corrections.

Transitional Treatment Home, Small: "Small transitional treatment home" means a residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. Such programs provide supervision, counseling and therapy through a temporary living arrangement and provide specialized treatment, habilitation or rehabilitation services for persons with emotional, psychological, developmental, behavioral dysfunctions or impairments. A small transitional treatment home shall not include any persons referred by the Utah state department of corrections.

Transitional Victim Home, Large: "Large transitional victim home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah as a residential support facility. A large transitional victim home provides twenty four (24) hour care and peer support to help victims of abuse or crime. A large transitional victim home arranges for or provides the necessities of life and protective services to individuals or families who are experiencing a temporary dislocation or emergency which prevents them from providing these services for themselves or for their families. Treatment is not a necessary component of residential support services, however, care shall be made available on request.

Transitional Victim Home, Small: "Small transitional victim home" means a residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah as a residential support facility. A small transitional victim home provides twenty four (24) hour care and peer support to help victims of abuse or crime. A small transitional victim home arranges for or provides the necessities of life and protective services to individuals or families who are experiencing a temporary dislocation or emergency which prevents them from providing these services for themselves or for their families. Treatment is not a necessary component of residential support services, however, care shall be made available on request.

"Trellis" means a frame of latticework designed to support plants.

Truck Repair, Large: "Large truck repair" means a use engaged in the repair of trucks that are in excess of one ton in size.

Two-Family Dwelling: See definition of Dwelling, Two-Family.

"Undevelopable area" means the portion of a lot that is unusable for or not adaptable to the normal uses made of the property, which may include areas covered by water, areas that are excessively steep, included in certain types of easements, or otherwise not suitable for development, including areas designated on a plat as undevelopable.

"Unique residential population" means occupants of a residential facility who are unlikely to drive automobiles requiring parking spaces for reasons such as age, or physical or mental disabilities.

"Unit" means the physical elements or space or time period of a condominium project which are to be owned or used separately, and excludes common areas and facilities as defined in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Unit legalizationdimensional zoning violations" means the violations of the city's zoning code related to side yards, rear yards, front yard setbacks, lot area and width, usable open space, building height and other violations.

"Unit legalizationimplied permit" means a permit for construction which either specifically is for the construction of a particular number of units in excess of what should have been allowed or which references that the structure has a number of units in excess of what should have been allowed or the city's continuous issuance of an apartment business revenue license for a number of units in excess of what should have been allowed.

"Unit legalizationnondimensional zoning violations" means violations not related to dimensional zoning violations, including the existence of illegal signs, front and side yard parking, hard surface driveways, fences, accessory buildings and similar such violations.

"Unit legalization permit" means a permit issued for construction by the city.

"Unit legalizationsubstantial compliance with life and safety codes" means all units, and the building in which they are located, are constructed and maintained in such a manner that they are not an imminent threat to the life, safety or health of the occupants or the public.

"Upholstery shop" means a business specializing in the upholstery of furniture for individual customers for residential, office or business use, but excluding upholstery for automobile use.

Use, Principal: "Principal use" means the main use of land and/or buildings on a lot as distinguished from an accessory use.

Use, Unique Nonresidential: "Unique nonresidential use" means the nonresidential use of a building resulting in a documented need for fewer parking stalls than would otherwise be required by chapter 21A.44 of this title, due to the building's particular design, size, use, or other factors and unique characteristics.

"Used or occupied" include the words intended, designed or arranged to be used or occupied.

"Vacant lot" means a lot in an established area or neighborhood which at the present time contains no structures or other aboveground improvements. In new residential subdivisions, lots which contain no structures or other aboveground improvements shall be considered vacant, as opposed to undeveloped land, when ninety percent (90%) or more of the total number of lots in the subdivision have been built upon and the remaining lots are scattered throughout the subdivision.

"Vanpool" means a mode of transportation where two (2) or more persons share a ride in a van to or from work.

Vanpool, Employer Sponsored: "Employer sponsored vanpool" means a program offered by a business or in conjunction with the Utah transit authority to provide a multipassenger van for employee transportation.

"Variance" means a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure under this title and authorized according to the procedures set forth in part II, chapter 21A.18 of this title.

"Vegetation" means living plant material including, but not limited to, trees, shrubs, flowers, grasses, herbs and groundcover.

"Vending cart" includes any nonmotorized mobile device or pushcart from which limited types of products, as listed in title 5, chapter 5.65 of this code, are sold or offered for sale directly to any consumer, where the point of sale is conducted at the cart, where the duration of the sale is longer than fourteen (14) days and where the vending cart meets the requirements of title 5, chapter 5.65 of this code for the conducting of business in a

specified permit operating area approved by the city.

"Vertical clearance" means clear space between floor grade level and ceiling height.

Veterinary Office, Large: "Large veterinary office" means a veterinary facility that serves large animals, either wild or domesticated, such as sheep, goats, cows, pigs, horses, llamas, wildcats, bears or other similarly sized animals.

Veterinary Office, Small: "Small veterinary office" means a veterinary facility that serves only small animals such as dogs, cats, birds, rabbits, reptiles, rodents and other similarly sized animals.

"Warehouse" means a structure, or part thereof, or area used principally for the storage of goods and merchandise.

"Waterbody/waterway" means a natural or manmade body of water such as a lake, river, creek, stream, canal, or other channel over which water flows at least periodically.

"Wholesale distributors" means a business that maintains an inventory of materials, supplies and goods related to one or more industries and sells bulk quantities of materials, supplies and goods from its inventory to companies within the industry. A wholesale distributor is not a retail goods establishment.

"Yard" means on the same zoning lot with a use, building or structure, an open space which is unoccupied and unobstructed from its ground level to the sky, except as otherwise permitted herein. A yard extends along a lot line, and to a depth or width specified in the yard requirements for the zoning district in which such zoning lot is located.

Yard, Corner Side: "Corner side yard" means a yard on a corner lot extending between front yard setback line and the rear lot line and between the corner side lot line and the required corner side yard setback line.

Yard, Front: "Front yard" means a yard extending between side lot lines and between the front lot line and the required front yard setback line.

Yard, Interior Side: "Interior side yard" means a yard extending between the front and rear yard setback lines and between the interior side lot line and the required interior side yard setback line.

Yard, Rear: "Rear yard" means a yard extending between the two (2) interior side lot lines from the rear lot line to the required rear yard setback line. In the case of corner lots, the rear yard shall extend from the interior side lot line to the front yard or corner side yard setback line.

Yard, Side: See definition of Yard, Interior Side.

"Zoning administrator" means the director of the division of building services and licensing of the department of community development or such person as the zoning administrator shall designate.

"Zoning districts" means areas of the city designated in the text of this title in which requirements and standards for the use of land and buildings are prescribed.

Zoning Lot: See definition of Lot.

"Zoning map" means a map or series of maps delineating the boundaries of all zoning districts and overlay districts in the city. (Ord. 68-06 § 1, 2006: Ord. 52-06 § 2, 2006: Ord. 20-06 § 1, 2006: Ord. 13-06 § 1, 2006: Ord. 90-05 § 2 (Exh. B), 2005: Ord. 89-05 § 9, 2005: Ord. 77-05 § 1, 2005: Ord. 76-05 § 10, 2005: Ord. 15-05 §§ 3, 4, 2005: Ord. 72-04 § 2, 2004: Ord. 6-04 § 20, 2004: Ord. 4-04 §§ 6, 7, 2004: Ord. 62-03 § 3, 2003: Ord. 61-03 § 3, 2003: Ord. 6-03 § 4, 2003: Ord. 50-02 § 2, 2002: Ord. 23-02 § 8, 2002: Ord. 5-02 § 4, 2002: Ord. 2-02 § 2, 2002: Ord. 84-01 § 2, 2001: Ord. 64-01 § 4, 2001: Ord. 20-01 § 4, 2001: Ord. 54-00 § 3, 2000: Ord. 20-00 §§ 4, 5, 2000: Ord. 14-00 §§ 16-18, 2000: Ord. 35-99 § 102, 1999: Ord. 30-98 § 7, 1998: Ord. 12-98 § 8, 1998: Ord. 8-97 § 3, 1997: amended during 5/96 supplement: Ord. 88-95 § 1 (Exh. A), 1995: Ord. 84-95 § 1 (Exh. A), 1995: Ord. 26-95 § 2(31-4), 1995)

Tab 2

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STEVEN MCCOWIN, Plaintiff, vs. SALT LAKE CITY CORPORATION; BARRY RASMUSSEN; MARK HAMMOND, Defendants.	MEMORANDUM DECISION Case No. 060912420 Honorable GLENN K. IWASAKI October 25, 2006

The above-entitled matter comes before the Court pursuant to Salt Lake City Corporations' Motion to Dismiss, Defendants' Motion to Dismiss or, Alternatively, for Summary Judgment, and Plaintiff's Motion to Advance and Consolidate Trial on Merits with Hearing on Motion for Preliminary Injunction. The Court heard oral argument with respect to the motions on October 23, 2006. Following the hearing, the matters were taken under advisement.

The Court having considered the motions, memoranda, and where applicable, the exhibits attached thereto, hereby enters the following ruling.

This matter comes before the Court the result of the building of a two story structure located at 446 South Douglas Street in Salt Lake City, Utah.

With its motion, Salt Lake City Corporation ("the City") argues Plaintiff's Complaint should be dismissed because it is

untimely, coming more than 30 days after the meeting or action for which the notice was given. *See* Utah Code Ann. § 10-9a-209. Moreover, contends the City, Plaintiff in this case did not file any appeal with the City Land Use Appeals Board and as such, has failed to exhaust his administrative remedies. Finally, asserts the City, Plaintiff's Complaint must be dismissed as he has admits receiving notice of a proposal to construct a garage on the neighboring property and has failed to demonstrate any deficiency in that notice.

Plaintiff opposes the motion arguing the City had an obligation to provide notice of the "substance" of the building and in this case, the hearing notice falsely represented that the proposed building was a "garage." According to Plaintiff, he relied upon the City's representation what only a "garage" was proposed when, in fact, it was a two-story building that would be the final product. Indeed, asserts Plaintiff, it was because of this representation that he did not attend the hearing. As a matter of law, contends Plaintiff, the hearing notice's use of the word "garage" failed to give adequate notice of the substance of the proposed building.

In light of the facts of this case, it is Plaintiff's position an exception to the requirement that administrative

remedies be exhausted should be instituted and the equitable discovery rule should be enforced to toll the limitations period.

Defendants Barry Rasmussen and Mark Hammond join in the arguments posed by the City with respect to dismissal of this matter. Specifically, argue Defendants, Plaintiff has no protectable property interest, the notice was adequate, and the Commission complied with City ordinances.

Alternatively, Defendants contend summary judgment is appropriate as Plaintiff's claims are barred by the applicable statute of limitations (which provide that any person adversely affected by a final land use decision has thirty days within which to file a petition for review in district court or such petition is barred). *See* Utah Code Ann. § 10-9a-(2) &(6)). Moreover, argue Defendants, regardless of whether the Commission violated any ordinance, the undisputed record demonstrates the Commission's decision would have been the same, hence, Plaintiff has suffered no prejudice. Finally, assert Defendants, Plaintiff is not entitled to a permanent injunction as a matter of law because he cannot establish special damages. Indeed, argue Defendants, any damages suffered by Plaintiff are shared by every landowner who lives in the University Historic District.

Plaintiff in opposition argues Defendants' motion for

summary judgment is premature. Moreover, contends Plaintiff, the two-story building's incompatibility with and injury to the University Historic District is, at the very least, a disputed issue. Additionally, asserts Plaintiff, he was entitled to a hearing notice accurately disclosing the substance of Defendants' proposed building. Indeed, argues Plaintiff, the City's ordinances mandate such a notice and this mandate was violated by the misleading notice that was sent. Further, contends Plaintiff, Defendants have repeatedly initiated and threatened to initiate, legal proceedings against conditions they dislike on their neighbors' property.

It is Plaintiff's position Defendants' two-story building is not a garage, the Notice was legally deficient and, the City violated a number of its ordinances.

Further, argues Plaintiff, as argued above, the equitable discovery rule tolls the limitations period.

Finally, Plaintiff contends he has suffered special damages over and above those suffered by the District generally. Indeed, argues Plaintiff, because of the proximity of the building to his property, it intrudes into his light and air in a way not shared by the general public.

After reviewing the record in this matter and although the

Court has some serious concerns regarding the adequacy of the "notice" provided Plaintiff in this case, prior to reaching this issue, the Court must determine that Plaintiff had a protectable property right for purposes of constitutional due process.

For his part, Plaintiff asserts the City's ordinances and/or the public hearing requirement create such a right and give him something in the nature of a property interest. This said, however, a legitimate claim of entitlement requires explicit rules creating the right and, if a city has discretion in applying the rules, there is no legitimate claim of entitlement. *See* Patterson v. American Fork City, 67 P.3d 466, 473 (Utah 2003). Indeed, in *Gagliardi v. Village of Pawling*, 18 F.3d 188 (2d Cir. 1994), the Second Circuit elaborated stating:

> Where a local regulator has discretion with regard to the benefit at issue, there normally is no entitlement to that benefit. An entitlement to a benefit arises "only when the discretion of the issuing agency is so narrowly circumscribed" as to virtually assure conferral of the benefit. The issue of whether an individual has such a property interest is a question of law "since the entitlement analysis focuses on the degree of official discretion and not on the probability of its favorable exercise."

Id. at 192. (Internal citations omitted).

While Plaintiff has cited several ordinances, he has pointed to nothing in those ordinances which purports to limit the City's

discretion in approving new structures in the University Historic District. Furthermore, the "deprivation of a procedural right to be heard . . . is not actionable when there is no protected right at stake." *Id.* at 193.

Based upon the forgoing, the Court finds Plaintiff's Complaint fails to state a claim upon which relief can be granted. Accordingly, the same is dismissed. In light of this ruling, the Court does not reach Plaintiff's Motion to Advance and Consolidate Trial on Merits with Hearing on Motion for Preliminary Injunction.

DATED this 30 day of October, 2006.

GLENN K. IWASAKI
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 060912420 by the method and on the date specified.

METHOD	NAME
Mail	STEVEN MCCOWIN PLAINTIFF 435 S 1200 E SALT LAKE CITY, UT 84102
Mail	LYNN H PACE ATTORNEY DEF 451 S STATE ST STE 505A SALT LAKE CITY UT 84111
Mail	PEGGY A TOMSIC ATTORNEY DEF 136 E S TEMPLE STE 800 SALT LAKE CITY UT 84111

Dated this 30 day of Oct., 2006.

Deputy Court Clerk

Tab 3

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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

STEVEN MCCOWIN, Plaintiff, v. SALT LAKE CITY CORPORATION; BARRY RASMUSSEN; MARK HAMMOND Defendants.	)	JUDGMENT Civil No. 060912420 Judge Glenn K. Iwasaki

Pursuant to the Court's October 25, 2006 Memorandum Decision in this matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Steven McCowin's Complaint and all claims asserted therein against defendants Salt Lake City Corporation, Barry Rasmussen and Mark Hammond are dismissed with prejudice. Each party is to bear its own attorneys' fees.

DATED: November 14, 2006.

Honorable Glenn K. Iwasaki

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

APPROVED AS TO FORM:

TOMSIC & PECK

Peggy A. Tomsic
Kristopher S. Kaufman
Attorneys for defendants Rasmussen and Hammond

Lynn H. Pace
Attorney for defendant Salt Lake City Corporation

Steven E. McCowin, pro se

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2006, I caused a true and correct copy of the foregoing JUDGMENT to be mailed, postage prepaid, to:

Steven E. McCowin, pro se
435 South 1200 East
Salt Lake City, Utah 84102

Lynn H. Pace
451 South State Street, Suite 505A
Salt Lake City, Utah 84111